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Maryland

CONSTITUTIONAL CONVENTION COMMISSION.

COMMISSION MEETING

Adult Education Center, University of Maryland
College Park, Maryland

August 21, 1966

COMMISSION MEETING

Adult Education Center, University of Maryland
College Park, Maryland

August 22, 1966

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Assistant to the Executive Director

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Ernest N. Cory, Jr. *(Resigned May 13, 1966)*
Walter R. Haile *(Resigned December 20, 1966)*
William J. McWilliams *(Resigned September 10, 1965)*
Ridgely P. Melvin, Jr. *(Resigned August 2, 1966)*
George L. Russell, Jr. *(Resigned July 12, 1966)*

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CONSTITUTIONAL CONVENTION COMMISSION

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Stanford Hoff
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(served until January 5, 1966)
Ernest N. Cory, Jr.
(served until May 13, 1966)
George L. Russell, Jr.
(served as Chairman until
July 12, 1966)

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Edward T. Miller
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Alfred L. Scanlan
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(served until June 6, 1966)
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(served until June 6, 1966)
William J. McWilliams
(served as Chairman until
September 10, 1965)
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(served as Chairman from
September 10, 1965 to
August 2, 1966)
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E. Phillip Sayre
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(served until June 6, 1966)

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(appointed on May 12, 1966)

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E. Dale Adkins, Jr.
(served until June 6, 1966)
William Prescott Allen
(served until January 5, 1966)
Walter R. Haile
(served from July 12, 1966 to December 20, 1966)
William J. McWilliams
(served until September 10, 1965)
Ridgely P. Melvin, Jr.
(served until August 2, 1966)
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Ernest N. Cory, Jr.
(served until May 13, 1966)
Walter R. Haile
(served from July 12, 1966 to December 20, 1966)
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Hal C. B. Clagett
(served until June 6, 1966)

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Franklin L. Burdette
(served until June 6, 1966)
Charles Della
(served until June 6, 1966)
Stanford Hoff
(served until June 6, 1966)
Clarence W. Miles
(served until June 6, 1966)
George L. Russell, Jr.
(served until June 6, 1966)

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Sunday, August 21, 1966, at 2 o'clock p.m., at the Adult Education Center, University of Maryland, College Park, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Dr. Harry Bard, Member
Calhoun Bond, Esquire, Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Richard W. Case, Esquire, Member
Hal C. B. Clagett, Esquire, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Conor Gentry, Esquire, Member
Walter R. Haile, Esquire, Member
Stanford Hoff, Esquire, Member
John B. Howard, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member

Reported by:
W. P. Banister
and
N. F. Swetland

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director
Professor Lewis D. Asper, Reporter for Committee on Elective Franchise and Declaration Rights
Dr. Clinton Ivan Winslow, Consultant
Dr. John H. Michener, Research Assistant

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THE CHAIRMAN: Come to order, please.

I am uncertain whether the minutes of the May meeting have been circulated. I do not have a copy and I don't think they have been.

MR. SCANLAN: I got a copy.

THE CHAIRMAN: May meeting?

MR. SCANLAN: May 16.

THE CHAIRMAN: Has everybody received his copy? Are there any additions or corrections? If not, the minutes will stand approved as circulated.

The minutes of the June and July meetings have not yet been circulated. They have been prepared but we held off circulating them because of the great volume of reports which had to go out. We thought they were more urgent than the minutes.

MR. SCANLAN: I have June 20.

THE CHAIRMAN: They have just been passed out. You haven't had a chance to look at them. The July are not here at all.

We do have here for the use of the Commission a record of all the formal actions taken both at the June and July meetings so that if any question arises as to action taken or the votes on any action taken, we can resolve it at this end of the table.

Report of the Secretary.

MR. MARTINEAU: I think that was it, Mr. Chairman.

THE CHAIRMAN: Report of the Executive Director.

(Report presented by the Executive Director.)

THE CHAIRMAN: I want to announce formally what I think all of you know anyhow. That is that Judge Melvin was appointed Associate Judge of the Circuit Court for Anne Arundel County several weeks ago. He resigned the day he swore in. I designated Mr. Martineau in his place as Chairman of the Committee on the Judiciary

Department.

The work of the Commission is so far advanced that I do not anticipate that any new member of the Commission will be added in Judge Melvin's place. So that we will continue with one short of full membership.

The Citizens Committee, as you all know, has been organized and is actively at work in promoting a heavy turnout of voters on the referendum on September 13. The past few weeks vacations and other things have kept that campaign from moving into high gear but Judge Gray tells me that they expect beginning next week to have a number of things move ahead very rapidly. This embraces many things which are in the category of reminders aside from articles like this flier, some of the large companies with heavy mailings are using a slug, advertising slug in the mailing machines, urging a vote on the constitutional referendum. This is not urging a vote for, it is simply urging people to vote. It is hoped that with the repetitive aspect of that, there will be in a matter of a week or so anywhere from fifty to a hundred thousand of those going out each day

throughout the State.

In addition, many of the large employee publications are either inserting in their pay envelopes or in their employee publications reminders about the necessity or desirability of voting in the referendum. Many of the large employers are also including a reminder either in the pay envelope next preceding the referendum or as a separate piece of paper with the pay envelope.

I am told all of the major political candidates have been contacted and are endorsing the referendum and including endorsements on their sample ballots, that the work of contacting every political candidate is moving forward.

We had hoped, if you will recall the agenda or targets we set up some months ago, to have the final recommendations of each Committee submitted by this meeting. We have not achieved that hope, but I think we are in such position that we can anticipate having recommendations from each Committee covering the entire scope of its activities not later than the September meeting. This would mean that for the first time we

would be able to include in one piece of paper at least tentative recommendations of this Commission with respect to an entire Constitution.

There are a number of mechanical problems involved that I would like to take a few minutes to tell you about because I think if you understand them, you can facilitate the movement of the paper work through the office and help all of us in achieving the objective of having reports in your hands more promptly.

As you all know from the volume of reports that you have for this meeting, the mere task of typing them up, proof reading the stencils, then having them run through the State Multilithing Bureau is a tremendous task. We have had great cooperation from that bureau because at times we have completely taken over their facilities as we did several days ago in order to get these reports out.

The number of copies of these reports that are required for one reason or another has grown by leaps and bounds so that the number of reports required for the use of the Commission and its reporters directly

is actually only a small fraction of the total number of copies that are issued. This includes copies that we are required to send by virtue of joint resolutions of the Legislature, copies that we are sending to various cooperating organizations such as the State Bar Association Committee on the Constitution, City Bar Association Committee on the Constitution, League of Women Voters, Democratic clubs, Legislative Liaison Committee and numerous other groups.

Accordingly, when a report comes in, it has been found necessary in order to put it through to reproduce at one time the total number of copies required and not merely reproduce what is required for the Commission and its staff. This means that it takes a very long time to process the reports, get them typed, checked, and get them through the office and then have them mailed out. With the limited staff we have, it has completely bogged down in the past few weeks with the result that the reports on the agenda for today have not been in your hands for a week prior to this meeting.

This poses some problems for this meeting but

I do not think they are insuperable problems. Many of the reports are going over ground which we have been over before and I don't think you will have any great difficulty in following.

A number of the reports are, however, entirely new. For instance, the report of the Judiciary Department and the report of the Committee on Finance and Taxation.

In order to accommodate the other engagements of some members of the Commission, we have scheduled for today the reports to be presented by Chairmen or reporters who for one reason or other are unable to be here tomorrow. As most of you know, Professor Asper leaves for California in a matter of a few weeks. He is the reporter for the Committee on Elective Franchise and Declaration of Rights. The two reports presented today hopefully would be the final reports of that Committee and will be the first on our agenda.

Dr.Bard has a longstanding engagement or series of engagements for Monday which make it impossible for him to be here tomorrow. His report is scheduled,

the Judiciary Department report to come up after that, but Mr. Case learned suddenly the other day that he must be in Baltimore tomorrow and therefore the first report of the Committee on Finance and Taxation will follow that.

I think that's about all we will be able to get through today. That will carry us through both the afternoon and evening sessions.

Tomorrow we will take up the report of the Committee on the Judiciary Department and the report of the, part of the report of the Committee on Miscellaneous Provisions.

If we have time, we will also discuss,although not act upon a preliminary tentative draft report of the Committee on Miscellaneous Provisions.

I am sure all of you have looked at the size of each report and have wondered how we can possibly get through them in the four sessions scheduled. I think we can but it means we necessarily will have to observe strictly some ground rules. Number one ground rule is that which we must observe in order to get a record of

this proceeding. Mr. Banister has a notation of the seat occupied by every member labeled with his name. So the first requirement to aid him is please continue to occupy throughout the meeting the same seat that you are now occupying.

Secondly, please wait until the Chair recognizes you before speaking. This will give me an opportunity to call your name and save Mr. Banister the necessity of looking down on the sheet to identify each person.

Thirdly, I don't want to impose any rigid requirements but I would suggest that insofar as possible, please in speaking on any matter before the Commission at any time during the four sessions say everything you have to say on the point at one time and do not come back into the discussion again until other members of the Commission who may want to speakhave spoken If you have already made your point, let it rest and don't come back for further emphasis. I say that because if we get into too long debates on any particular matter, we will simply never finish.

Much more troublesome question of what to do with respect to matters as to which reconsideration is sought is a matter as to which we are still not going to impose any rigid rules, but I will ask the Commission to follow along with the Chairman and we will play it by ear.

I do not want to impose a rule that any matter heretofore voted on cannot be reconsidered except on the motion of the person who voted one way or the other or two-thirds or anything of the sort. At the same time we obviously can't keep going back reconsidering matters that have already been fully discussed.

If, therefore, a matter has been fully discussed at a previous meeting, at least at the last meeting where we had practically full attendance and a vote taken, it will not be resubmitted for discussion and vote at this meeting unless a member feels so strongly about the matter that he asks the Chair to particularly submit it again. In that situation, I will first put to a vote the question of whether the Commission wants to reconsider the matter without debate. If the Commission decides

not to reconsider, I would hope that would be the end of that particular point. One exception to that is that I think each Committee Chairman or reporter must be considered as an exception to this rule because there are times when the Commission has taken action in the course of debate which on further reflection the Committee feels is inappropriate and should be reconsidered. Therefore, the exception to the rule will be that the Chair will consider a request by a Committee Chairman speaking for his Committee to reconsider any matter which the Committee feels should be reconsidered. I sincerely trust that each Committee Chairman will not present matters except matters that the Committee feels very strongly are vital and that the Commission has acted erroneously upon.

I am laying these rules down as general ground rules without any idea of being rigid about them. We will simply have to make as much time as we can. If we find that we are spending too much time in debate on one matter, we will have to shut it off and move to another.

With the advent of September and the hoped for complete draft,at least tentative draft of the Constitution, I think we have got to work out a little different procedure before the next meeting. I want to suggest this for the consideration of each Committee Chairman and reporter. First off, before we release any completed document, even a very tentative one, I want it checked over by the Committee on Style. Initially to eliminate inconsistencies that have crept in. For instance, references to the General Assembly by that name in some places and by another name in other places. Duplications and differences in treatment of sections and articles, and so forth.

I do not want the Committee on Style at this time to be making any changes at all in the text suggested by a Committee without the concurrence of the Committee. With that in mind, I will ask the Committee on Style to confer with the Chairman and reporter of each Committee well before the next meeting as to any changes which it deems desirable in the text of the portion of the Constitution being drafted by that Committee.

I suggest that at this time we not try to make a great many changes of style or any which lead to protracted discussion. I am more interested in getting before the Commission and before the public a complete text of a tentative draft of the Constitution than I am in having one that is the final polished document.

I will not know until the end of the session tomorrow, when we take the question up with the Committee, what your pleasure will be as to the next meeting, whether you will want to postpone it a week because this meeting is postponed a week, whether it will be a two-day session, if so, what two days, or even a longer session. I do not see how we can possibly hope to have less than a two-day meeting in September. It is perhaps the key meeting of all.

This means that we will also begin serious work on what we have been calling the work book, the supplemental report that will contain the documentation for the draft which we will be submitting. In this area we need a tremendous amount of help. The original idea of developing this with research assistants has been

helpful but it is simply not enough. I think perhaps the most urgent problem is to try to get someone who could be available to us full time and act as sort of editor of the project, pull it together and boil down the various documents that we have and bring them together in some coherent form.

I went to New York several weeks ago and discussed the problems with the representatives of the National Municipal League, who are watching our progress with a great deal of interest and received several suggestions from them.

I find, however, that just as our experience has been, that to put your hands on qualified personnel is very, very difficult, this has been the experience of every other state trying to operate a Constitutional Convention or a preparation Commission. There is simply a dearth of persons who are qualified, who have the necessary writing and editorial skill plus the knowledge of the Constitutional revision that is desirable in order to do the task. However, we have gotten several names and I am hoping that we will be able to work out that

problem.

With respect to the work of documentation for the Committee on the Judiciary Department, I think we have been more fortunate in that Mr. Justice Tom Clark of the United States Supreme Court, who is president currently of the Institute of Judicial Administration, has interested himself in our project. I have written to him about it. He has talked to me and has arranged for the executive director of the Institute to come to Baltimore next Wednesday to meet with the Chairman and reporter of that Committee, Mr. Brooks and myself, and undertake for us the further detailed research or pulling together the data necessary to document the report on the judiciary. There is a great deal to be done in this area, matters that the Committee knows about, but it is simply a question of getting the figures and other data, historical and statistical, together and on paper. This project of the Institute will relieve us both from the point of view of the expense of it which they will bear and the personnel which they will supply.

It is entirely possible that some of you may know other similar groups who could come in and undertake such projects for some of our other committees. If you do, please let us know.

I believe that is all the preliminary matters that I want to go into.

MR. BROOKS: I have copies of the minutes for May 16 and June 20. If any of you do not have one, let me know and I will be delighted to give you one. Also is anyone else here who has not received a complete set of the mailings who did not receive in the mail yesterday six reports? Five or six reports. When we come to any particular report, if you don't have that one, let me know. We have extra copies.

MR. BOND: Mr. Chairman.

THE CHAIRMAN: Mr. Bond.

MR. BOND: I must confess I am disturbed. I realize the tremendous pressures we are working under and how well the staff has turned out the reports. We got six reports yesterday. I see the third report of the Committee on Judiciary which I understand from your

comments we will be asked to vote upon tomorrow. I didn't know where to start reading yesterday. I skimmed it. If we go as we did last time, we will meet late tonight. I wonder if there is any way we could have time so those of us who have not had a chance to become familiar with this report could at least do some home-work or in some way make ourselves ready for the vote. I imagine there are others in the same position.

THE CHAIRMAN: Mr. Bond, we are, of course, fully aware of this. I intended to say that we would not regard the action of the Commission on any of the reports that are being presented for the first time today as necessarily being final. We had hoped to present the preliminary draft of the article on the Judiciary at the last meeting. The preliminary draft was circulated a month ago. So that while this is in one sense the first time this is being considered, nevertheless the substance of it, certainly 90 per cent of it, has been in the hands of the Commission members for a month. Nevertheless I would not consider that the action of the Commission in approving the language of the report is

necessarily final today.

The same thing is true with respect to the first report of the Committee on Finance. Although in that, as you will see when you come to it, the section of the Constitution that is recommended by the Committee is relatively short, nevertheless I have discussed that with Mr. Case and at the proper time he will submit that for tentative approval and hold it until his next report is submitted next week.

With respect to the Committee on the Legislative Department, this is largely a review of the other matter. Declaration of Rights is new in the sense that this is the first time the actual draft has been presented but, as indicated in the Committee's report, the basis for the actions taken by the Committee have been heretofore submitted to and approved by the Commission at one of its very early meetings.

I would ask that each Committee Chairman and reporter particularly where the matter is new, have in mind that the members of the Commission have perhaps not had the opportunity to read the full report. So make your presentation a little more detailed than you

would otherwise.

Unless there are other questions, we will move ahead to consideration of reports and take up first the Fifth Report of the Committee on Elective Franchise. This is the report dealing with the article on suffrage and elections and because it is not the first report on that subject, the report does not contain all of the sections of that article. You should have separately a four-page document that contains the text of the complete article in which the sections heretofore approved by the Commission are in Roman type and the sections included for consideration today are in italics. You should have both of those reports before you. Does anyone not have either? One is the mimeographed paper headed Fifth Report of the Committee on Elective Franchise. The other is the Xerox paper headed Article on Suffrage and Elections.

Mr. Gentry and Professor Asper, will you present the report.

MR. GENTRY: The Fifth Report which embraces the changes in the article on suffrage and elections, I

I might preface the remarks very quickly by pointing out this is the third or fourth go-round on the election article. There is nothing new in this report, nothing of substance which is new. The changes which are recommended here reflect the suggestions made by the Commission in Easton and hopefully at least the Committee is hopeful this would be the final report. For the reason that the Committee strongly feels that any further changes one way or the other as we have been doing in the past are going to destroy the over-all pattern and over-all continuity of the article.

Moving in now to what is Section 4, Section 4 as presented previously left the question, some question in the minds of the Commission, as to whether or not the mental incompetency as a disqualification for voting was sufficiently clear. So it was suggested there and the Committee now recommends that the General Assembly is to establish disqualifications for voting for the reasons of mental incompetence and conviction of serious crime. This would leave to the General Assembly the question of whether it is an incompetence by reason

of commitment, by reason of certification of doctors, how long that should remain, when the man should be reinstated, and those questions. As well as leave to the Legislature the question of the delineation of serious crime, whether that be a number, whether it be convictions which have a term of over one year or whatever the case might be. It may be changed from time to time as is deemed necessary in the eyes of the Legislature.

So the Article 4 as you see there on the first page would read: the General Assembly shall by law establish disqualifications for voting for mental incompetency and for conviction of serious crime. Any person excluded from voting for conviction of crime shall again be eligible to vote if pardoned by the Governor. There is no change of substance from what was previously approved by the Commission on several occasions. It is merely a variation in style to leave to the Legislature the term of what is incompetency and what is serious crime.

The Committee recommends that the Section 4 be adopted.

THE CHAIRMAN: Any questions?

MRS. BOTHE: Second the motion.

DR. MICHENER: Presumably this will include Federal crimes and treason and in other states but as it is here, the only thing would be pardon by the Governor of Maryland which would not be applicable in all cases. Shouldn't it be pardon by appropriate executive authority?

MR. GENTRY: We talked about this once. It was felt wherever he got the pardon it would be usable.

THE CHAIRMAN: The comment is your last three words are "By the Governor" which would mean by the Governor of Maryland in this Constitution.

MR. MILLER: Could you say legally pardoned and not say by whom?

MR. CLAGETT: As I understand it, Professor, if you said by the appropriate executive authority that would take care of all situations.

DR. MICHENER: I just suggested one possibility.

THE CHAIRMAN: So we don't waste time on

language, would the Committee accept tenatively either of these suggestions? Perhaps Mr. Miller's, if legally pardoned, or some similar phrase.

MR. GENTRY: It seems to be satisfactory.

THE CHAIRMAN: Let me suggest that the Committee reconsider that phrase and in the September draft include whichever language they think is proper. Any further questions?

MR. MINDEL: Why should the Committee use serious crime in one instance and plain crime in the second? Is it necessary to use the word serious?

MR. GENTRY: There has been quite a lot of thought to serious. Even though vague, it gives the thought to the Legislature that the Constitution provides you should be disenfranchised only if a crime is serious. To leave the word out altogether it would leave to the Legislature power for parking violation, power to disenfranchise for anything of that sort. This gives the courts the right to test that and the right to apply this test in such manner and with such latitude as the courts from time to time would see fit. I don't think

it necessary in the second sentence at all because if the crime committed was such that it was not disenfranchising the pardon would not be necessary.

THE CHAIRMAN: Any further question on Section 4? If not, we will move on. Section 5.

MR. GENTRY: Section 5 stands exactly as was presented and approved in Easton with the deletion only of the words "The General Assembly shall by law establish legislative, determine legislative districts." It was felt that that designation of the words legislative district, which is going to be the test for residential requirements and in voting, should be left out and is already picked up by the article on political subdivisions. For that reason was not necessary. We ran the risk of using a term which may not be appropriate in view of the article finally gotten out by the article on political subdivisions. We just deleted it. It is already done anyway and might have led to confusion. Section 5 as it now reads, there has been no change except for that deletion.

THE CHAIRMAN: Any questions as to Section 5?

Any comments? We will move to Section 7.

MR. GENTRY: Section 7 is a revamp although it holds what we felt was the wishes of the Commission at the Easton meeting to allow to the subdivisions authority over local elections. But we wanted to retain all the qualifications of Section 1 with the two exceptions. With the proviso that they could establish a longer residence period up to but not exceeding one year and that they could also extend the voting right to nonresidents who own taxable real estate in that locale. It was felt with the exception of those two instances all the voting requirements as set out for state and Federal elections as mentioned in Section 1 should apply to local elections but we should give to the subdivisions those two powers. That was also approved at Easton.

MR. CASE: Mr. Chairman.

THE CHAIRMAN: Mr. Case.

MR. CASE: I suggest the use of the words political subdivisions is going to cause trouble. I think you will find throughout a great part of the code,

particularly those sections distributing the so-called Sherbow funds, that funds go to counties which are called political subdivisions.

In other words, what I am saying is that the term political subdivisions can mean a county, it can mean a city, it can mean a taxing district or it can mean any other municipal area.

THE CHAIRMAN: I think that's what the Committee intends here.

MR. CASE: I am wondering whether or not you really mean that a political subdivision such as, let's say, Prince Georges County would be able to establish a one-year qualification for a local election and yet as I understand it, Section 1 provides for some shorter period.

THE CHAIRMAN: Six months.

MR. CASE: If you have, as we do now, as I expect it will continue to be, general and local elections held at the same time on the same voting machines, same day, I think it is going to cause an intolerable situation to have people coming in presenting themselves to vote

for general election who can't vote for county council men or whatever you call them. It was my recollection at the Easton meeting, I could be wrong, that what the Commission was thinking about here were elections in the towns. I think the illustration was some of the resort cities like Ocean City and that kind of thing. I venture to say if you make a difference, if you provide for a different system of qualifications for a county-wide election than for state election, you will have utter chaos.

THE CHAIRMAN: May I call the attention of the Commission to the fact that this is commented on on Page 4 of the report.

Mrs. Freedlander.

MRS. FREEDLANDER: As a member on both committees, I would say that Mr. Gentry has not made a recommendation that this provision be deleted.

THE CHAIRMAN: Which provision?

MRS. FREEDLANDER: This section 7, in light of the fact that the Political Subdivisions Committee is going to recommend provisions with regard to home rule,

that such a provision would be more appropriate either in a charter of a charter community or in their ordinances as would be applicable and that this should be removed from this article.

THE CHAIRMAN: This is a matter which was the subject of very great debate at the July meeting except that, as Mr. Case has pointed out, the discussion there bore on the municipal corporations as distinguished from counties. I therefore would treat this as one of the matters already acted upon by the Commission unless you want to press it for reconsideration.

MRS. FREEDLANDER: I would like to press it for reconsideration.

THE CHAIRMAN: Then I submit at this time the question of whether the Commission wishes to reconsider the deletion from this article completely of any authority to political subdivisions, not considering now Mr. Case's point and leaving that for the Committee on political subdivisions, this is being submitted without debate. Those in favor of that reconsideration signify by a show of hands. Those opposed.

Seven to nine. The motion is lost.

Mr. Gentry, do you want to make a comment on Mr. Case's point?

MR. GENTRY: Of course, I expect that maybe you have now turned to Page 4 where we discuss this very problem, Mr. Case was mentioning. While it is true at Easton we talked about the specific localities and the cities and towns, et cetera, it was felt by the Committee that this same reasoning should apply to the broader area of the entire county. We point out there that although it is highly unlikely that such action would be taken by the county and even less likely it would have any appreciable effect if it were so taken, at least the effect on the voting, it may present a mechanical problem but wouldn't affect appreciably the voting outcome, but it was felt that the same reasoning should apply to some counties.

THE CHAIRMAN: May I ask a question at this point? Is it true generally throughout the state or perhaps universally that the municipal elections are held at a time other than the time for general elections

but that county elections are held at the same time as general elections?

MR. GENTRY: I think with some exceptions -- I remember Mr. Hoff mentioned the exception in Carroll County that were held at the same time.

THE CHAIRMAN: Municipal elections at the same time?

MR. GENTRY: Is that right?

MR. CASE: That is not right.

MR. HOFF: Quite a few towns have municipal elections at times other than the general or primary elections.

THE CHAIRMAN: Mr. Case.

MR. CASE: I have certain knowledge of at least eight towns, six of which are on the Shore, where your town municipal election is totally different and two on the Western Shore and I am sure you could find a great many more.

THE CHAIRMAN: What do you mean by totally different?

MR. CASE: Totally different in time of

election from the general.

But on the other hand the county, local county election is always held at the same time as the general election for state-wide office.

With reference to Mr. Gentry's point, there is a very decided difference in reasoning for the qualification in the town as distinguished from the qualification in the county. The reasoning is that in the town you have certain affairs that are regulated by the town council, involving very specific property rights and ownerships of property, in which, particularly in resort areas, where the owner of the property is a registered voter of some other area. So he gets a chance to vote for president, he gets a chance to vote for his local areas, local officers, somewhere else.

A good example would be to my own knowledge the Town of North Beach where there are a large number of people from Fairfax County, Virginia, who live in North Beach. North Beach at one time was putting in a rather comprehensive and expensive sewer system and these people wanted the right to vote because their land

was going to be taxed for that system. This is not true in the county as a whole. The reasoning is totally different when you apply it to the county. Therefore, I submit a different result should follow.

THE CHAIRMAN: Mr. Scanlan.

MR. SCANLAN: I must confess I certainly share Mr. Case's recollection. The whole discussion of this article before us was in terms of the municipalities. I wouldn't have voted for it in this form because it seems to me in this form it goes a long way to impair the liberalizing and unifying impact of Section 1. In addition to the confusion on the machine and how you would set it up, which I can mainly see it might have also an adverse impact in reducing the number of those who would take the time and trouble to cast a vote in the state election. They would find they are not eligible in the county and would say to heck with it.

I would move that the phrase political subdivision be changed to municipality.

PROFESSOR ASPER: Is that a term of art?

MR. SCANLAN: Municipal corporation.

MR. CASE: I would say without getting into a lengthy debate on that because it can be debated, you can find cases in the Court of Appeals calling, for example, Washington Suburban Sanitary Commission a political subdivision, that the matter be rereferred to the Committee with the idea of selecting the appropriate term to designate what we are talking about, namely, resort towns and this kind of thing. I would so move if it is in order.

THE CHAIRMAN: Mr. Clagett.

MR. CLAGETT: I would make this comment. The Committee on Political Subdivisions and local government is going to recommend that the broad grant of powers be given to the counties. It is contemplated that the counties would within that broad grant determine the election qualifications.

By putting this in the Constitution as it stands now, you are really to some extent restricting the Legislature from coming into the picture and regulating uniformly for all counties throughout the state where it may be desirable to do so in order to

establish uniformity.

As the picture stands now, the Legislature through Constitutional power and through the implementation of it in Article 23 (A) effectively has already set up the qualifications that go into the charters of the municipalities and it is working very satisfactorily insofar as municipalities are concerned at the present time. There would be no change in that as contemplated by the provisions and recommendations of the Political Subdivisions Committee. That will continue.

The recommendation of the broad grants to the counties would only make the Legislature the one that would have the control as it does now with respect to the municipalities.

I would really strongly urge that all this language and this whole section be eliminated if we weren't bound by the vote we took a few moments ago. We are getting into unnecessary complications.

THE CHAIRMAN: Let me explain the reason for my ruling before. It was my understanding that at the July meeting when this matter was discussed, the Commission

decided that the question of voting and qualifications for voting were a matter of constitutional import and that they should not be left to the Legislature to either act on its own initiative for the state or to delegate to the political subdivisions.

This was the question that was discussed at length in the July meeting. It was therefore the basis of my ruling that the Commission had decided that the question of qualifications to vote was a matter which should be fixed in the Constitution and not left to be determined by the Legislature. Is there any other member of the Committee who wants to comment before we act on this section further? Mrs. Freedlander, you are a member of that Committee.

MRS. FREEDLANDER: No, sir, I have spoken, thank you.

THE CHAIRMAN: Mr. Hoff.

MR. HOFF: I notice that Calhoun Bond and I both had the same notes on Section 7, that the qualifications of this section were to refer to towns, for voting, incorporated municipalities only, towns and

cities, not counties.

THE CHAIRMAN: I take it, Mr. Case, that your motion is that Section 7 be referred back to the Commission to substitute for the phrase political subdivision in the fourth line of the section an appropriate phrase which would exclude counties and include municipalities, political subdivisions other than counties. I believe Mr. Scanlan seconded the motion. Is there any further discussion of that motion? Are you ready for the question? Those in favor please signify by saying aye. Contrary, no. The ayes have it. It is so ordered.

MR. MILLER: Mr. Chairman.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: Before leaving this, this is a rather small detail, but does the Committee think that the words real property -- I am thinking of title to real estate. Sometimes in summer communities people with a ten-year lease will be taxed on thousands of dollars of personal property. Usually the local municipality would let them vote if they had such a thing

but they wouldn't technically have title to real estate.

THE CHAIRMAN: Mr. Gentry, do you want to comment?

MR. GENTRY: I don't think that was given special consideration.

PROFESSOR ASPER: It was, based on my recollection of the discussion, it was all, the only things actually discussed were Ocean City and Bel Air on real property, people who owned homes, summer homes, this sort of thing.

THE CHAIRMAN: Was it that or was it the intent to permit the municipality to extend the right to vote to taxpayers?

PROFESSOR ASPER: I understood that it was owners of real property subject,as Mr. Case suggested, to sewerage assessments and that sort of thing.

MR. MARTINEAU: I believe the phrase, from the abbreviated version of the minutes I have, I believeMr. Miles used it, he said property owner, but did not designate real or personal property.

MR. MILLER: I assumed, Mr. Chairman, we are speaking of taxpayers rather than whether the property was real or personal. I am not going to make a tremendous point of it. I would move the word real be struck out.

(Seconded.)

MR. GENTRY: Might I ask Congressman Miller: Is the question you raise whether real property should also be expanded to real and leasehold property?

MR. MILLER: Just say taxable property.

THE CHAIRMAN: In other words, they might be taxed on furniture?

MR. MILLER: What is more important is many merchants store great stocks of goods at a resort and they are taxed on it. They may only have a ten-year or five-year lease on the premises but they are substantial taxpayers in the municipality.

MR. GENTRY: I wouldn't want to extend it by eliminating real property to extend it to something like a bank account or safe deposit box or something like that. That is what we were trying to avoid.

THE CHAIRMAN: Are such taxed by municipalities?

MR. GENTRY: Not at the moment, to my knowledge.

MR. MILLER: I don't think any municipality would extend a voting right because somebody had a safe deposit box in the town.

THE CHAIRMAN: Any other comment?

MR. MARTINEAU: My understanding would be if we took out the word real property --

THE CHAIRMAN: The motion is just to delete the word real.

MR. MARTINEAU: Took out the word real, that the towns could limit the grant of the vote to persons owning real property or persons owning any kind of property that they would designate. This is merely a grant of power.

THE CHAIRMAN: That is right.

MR. MILLER: That is right.

THE CHAIRMAN: Any further discussion of the motion? The motion is to delete the word real in the last line of Section 7. Are you ready for the question?

All those in favor signify by saying aye, contrary, no. The ayes have it, so ordered.

MR. GENTRY: Moving down to those sections of the article relating to referendum, in Section 8, which describes the referendum and filing of it, signatures, et cetera, we have changed. The fact that emergency law should now read three-fifths vote because we might not have an emergency law definition picked up elsewhere.

We took out the reference to file with the Secretary of State, left that blank.

That is the only change. Other than that Section 8 reads as submitted at Easton. In other words, there has been no change of substance but just changed words to mean hopefully the same thing. Three-fifths vote of all members of each house be equated with an emergency law.

PROFESSOR ASPER: It is more comprehensive than an emergency law. As I understand it, it was the wish of the Commission that this apply to any law passed by a three-fifths majority of members of both houses

even though not necessarily designated as emergency law prior to introduction.

THE CHAIRMAN: That is right.

MR. CASE: That is correct. This is the compromise suggestion made at Easton to embrace that and properly so.

THE CHAIRMAN: Any questions?

JUDGE ADKINS: I have a question on the validity of this concept. I am not clear in my mind whether I am right or wrong. It seems to me if a bill is labeled an emergency bill and passes by a three-fifths majority that the members voting on the bill are conscious that it is an emergency bill and hence cast their vote with that fact before them. And at the same time they can be conscious or subconsciously aware of the fact that the bill cannot be suspended by a petition.

If you simply require that any bill passed by a three-fifths vote will not be suspended, it seems to me then you leave yourself open to the point of view of not having the Legislature aware at the time it votes on the bill that this can be operative. I am not stating

my proposition very clearly but I am concerned about this because in press of legislation a lot of bills go through by a simple routine roll call without real debate or contest and maybe it is intended they should not be suspended but it seems to me you are considerably downgrading the whole referendum advantage if you adopt this provision. I am not sure it is not all right because I am not sure I like the referendum but that is another problem.

THE CHAIRMAN: This is correct. I am not sure from the minutes just what action the Commission intended. As I understood it at the July meeting the Commission definitely wanted to get away from the label emergency bill and definitely wanted to get away from the idea that in order to be nonreferable, the bill had to be effective at a date different from the normal date. But it is not clear to me whether the Commission meant that any law designated in some way as nonreferable and passed by three-fifths vote should be nonreferable or whether the Commission meant merely that any law which ended up with an affirmative vote of more than three-

fifths should be nonreferable.

MR. CASE: I think that I am guilty of this crime on the Commission. I believe this is some point that was made by me at Easton.

My recollection is that at the time I had in mind that we would be talking about and were talking about emergency legislation.

So that I think what we voted on there was in effect that this would operate in the case of emergency legislation passed by three-fifths. But further thinking about it, just hearing Dale Adkins suggestions, leads me to believe that really his point is more imaginary than real because as a practical matter, you know pretty well, as a matter of fact in my experience in Annapolis I have never seen an act which is wending its way through the General Assembly that wasn't pretty well known because of its controversial nature that it would or would not be subject to referendum petition. I think once this rule is known by everybody, all Legislators know that to get three-fifths vote that then the bill is going to go into effect immediately. It seems to me

this knowledge in and of itself is going to take care of the point Dale is making.

I would have no objection myself to see it go back to specific emergency legislation because I think that's what I had in mind. But on second thought, I think it is a very tenuous position and one which, as a practical matter, wouldn't have any effect.

MR. SCANLAN: I was one of those misled by Mr. Case's motion. I recall the legislative history of this provision. I moved that the whole section on referendum be struck on the grounds we didn't need them any more. That was defeated by a fairly close vote. Mr. Case then suggested a compromise which is the language you now have in Section 8.

If it was intended to refer to emergency legislation, then it is no more than we have in the Constitution now because emergency legislation in that case the law becomes effective. I voted for the compromise because I thought this was some curb on the abuse of the referendum procedure. I would prefer it stay as it is.

I think it wouldn't take long for the Legislature to get used to the new language. I would prefer the language as it stands even though Mr. Case didn't intend it that way.

MR. CASE: We talked about it in the context of emergency legislation but seeing it in print I think this is preferable.

THE CHAIRMAN: Professor Burdette.

DR. BURDETTE: I think, having a fairly clear recollection of the matter, I do regard this language is certainly as I intended it. I felt with some stress I was defending the referendum rather vigorously but not wanting to defend the abuses of the referendum I thought this clearly preserved the referendum on matters of close votes in the Legislature with some exceptions which we have written in but that when the Legislature had a pretty strong preponderance that we did not have a referendum.

THE CHAIRMAN: Any other comments? I would suggest another area which troubled me that isn't answered by any of the comments that have just been made.

That is that you might have members of the Legislature who would be in favor of a bill and wanted to be recorded as voting for it but not be in favor of withdrawing that bill from referendum.

In other words, if you had a provision in this section that said, for instance,provided that any law designated as nonreferable and passed by three-fifths vote, et cetera, a member of the Legislature who would be for the bill might vote against it because he would not want to withdraw it from the referendum and that in that situation you would pose a dilemma for such a member with this language.

PROFESSOR ASPER: May I point out that this provision does not say that these bills are not referable but merely says they go into effect immediately, shall not be suspended by action of the referendum petition.

What is to be not subject to referendum is in Section 10.

MR. CLAGETT: There would be no reason why the bill itself could not provide for a referendum

to meet that very point if there were enough people that felt that way about it, enough Legislators who felt that way about it.

THE CHAIRMAN: I think Professor Asper has answered the comments I made very effectively. Any further comments?

MR. SAYRE: Just a question here. When you say that it shall stand, on the 30-day part, then such law shall not take effect until 30 days after its approval. Here we are writing an arbitrary 30 days. I was wondering if unless as otherwise provided or something like that, by the terms of the bill itself.

MR. CASE: The last clause?

THE CHAIRMAN: The sixth line.

MR. SAYRE: Just a matter of the arbitrariness of 30 days.

THE CHAIRMAN: You would suggest words such as for instance earlier than in place of until? In the sixth line of the section.

MR. CASE: Mr. Chairman, I think that's what the Constitution says now, 30-day period. I think you do

need an arbitrary guide line in this situation to know exactly when things are going to happen.

THE CHAIRMAN: Mr. Sayre's point is a bill might provide that its effective date be postponed for a year, January 1, 1968, and if it were submitted to referendum and approved, you might advance the date by this language. Is that your point, Mr. Sayre?

MR. SAYRE: Yes, exactly.

MR. MARTINEAU: I have a question here. Is it contemplated that the Legislature will not be able to pass a bill that is to go into effect immediately?

MR. GENTRY: I don't follow you.

MR. MARTINEAU: Is it contemplated the Legislature will be able to pass a bill that will go into effect immediately?

MR. SAYRE: Yes, and if it is the case, we should allow for that.

MR. MARTINEAU: If that is the case, the way this reads, you have to file a petition before the date on which any law enacted by the General Assembly is to go into effect. So it doesn't provide for the

possibility of filing a petition where the bill goes into effect immediately.

MR. HAILE: If we insert after the word General Assembly on top of Page 6, the phrase may expressly provide it, those four words, then you would have a proviso provided that any law passed by a three-fifths vote of all members of each House of the General Assembly may expressly provide that it shall take effect notwithstanding a referendum.

In the bill before it is enacted, it could have a clause which says by vote of three-fifths it is declared that this bill will take effect notwithstanding a referendum petition. If it passes by three-fifths vote that is law.

THE CHAIRMAN: That is not Mr. Martineau's point. His point is that if the Legislature passes a bill by any vote and says it is effective tomorrow, you have cut off the right to referendum because there isn't time to file a petition before the effective date.

MR. MARTINEAU: Particularly under the interpretation you can't gather signatures on a petition until

the law has been passed by the Legislature.

PROFESSOR ASPER: This was raised last time. In the present Constitution the stipulation of when laws are to become effective is found on the article on referendum. I suggest this is rather the wrong place for it to be that it fitted better in the article on Legislature designating when laws are to become effective. I thought we had Commission approval of that alteration. So that we simply refer here to whatever is provided in the article on the Legislature.

MR. MARTINEAU: I think you have to provide here that where a law becomes effective immediately there has to be a certain amount of time for the filing of a petition which you don't provide in here.

THE CHAIRMAN: The article on the Legislative Department will, I think, provide June 1 but give the Legislature the right to fix any earlier date. So that that doesn't meet the question.

MR. MARTINEAU: Our whole concept here is that an emergency bill can still be subject to referral but under this section it can't be because if it is

effective immediately you cannot file the referendum petitions before the date the law goes into effect. You have left an opening there.

THE CHAIRMAN: Any further comment, Mr. Gentry, or Professor Asper?

MR. GENTRY: No, only we haven't mentioned effective date here. We are leaving that elsewhere. If that is something, if the problem is in the operation of an effective date, it would seem to me it would be picked up by the article on legislation.

MR. MARTINEAU: I don't think so when you talk about when referendum petitions have to be filed. In other words, if you have 60 days between the time the bill is enacted and the time it is effective, this is all right but if you don't have 60 days, it seems to me you ought to write into this that any bill you have at least 60 days to file petitions or any other arbitrary number of days.

DR. MICHENER: Can this be resolved simply by not referring to so many days before effective date but say in so many days after enactment which would cover

all these.

MR. MARTINEAU: Yes.

THE CHAIRMAN: That is one device. I would like to suggest in view of comments made that this section be reconsidered by the Committee. Would you accept that?

MR. GENTRY: Yes.

THE CHAIRMAN: In connection with that, may I ask you also to consider whether the phrase "At the next general election" should be repeated at the very end of the section?

DR. BARD: I would like to remind you our Legislative Department Committee is recommending deletion of Section 31, which does deal with the effective date of bills. We feel Section 31 adds very little since the General Assembly may under its terms provide for any effective date for legislation and therefore this clears you in regard to what we are doing.

MR. SCANLAN: Do I understand it is being referred back to the Committee to come up with language which meets Mr. Martineau's objection, namely, that even

if a bill is to become effective immediately the 60-day procedure specified in Section 9 would be applicable to such a bill.

THE CHAIRMAN: That is correct. And there are several other suggestions as to phraseology.

DR. WINSLOW: May I raise a question of location on this. Maybe this is for the Committee on Style. It would seem to me the whole business of the referendum belongs with the Legislative Department, not with elective franchise. This is part of the law-making process just as the Governor's veto is part of it. This referendum belongs in the article dealing with the Legislative Department. Has that been decided otherwise by the Commission?

THE CHAIRMAN: Decided otherwise by the staff, you might say, in the original allocation. You can allocate it to this Committee on the theory that it is the act of the electorate that you are dealing with and hence belongs in the article on elective franchise. I think as a practical matter in view of the close relationship between this article and that of the

the Legislative Department and more particularly in view of the imminence of Professor Asper's departure that we are going to end up with a joint effort on this. I think that is it, isn't it?

MR. GENTRY: Section 9 does involve a recommendation of the Committee which varies from what was decided at the Easton meeting.

We passed before in voting, the percentage voting, we had no reference to spread of vote throughout the state. We were told at Easton if this was desirable, generally we picked up the language which is in the brackets there which would effect that.

What I would point out is that the Committee in drafting this deliberated pros and cons of referendum, went into the various things, we were content to stick with the 5 per cent although there was some reluctance to consider that. We did not like at all the bracketed material which would require that the referendum vote be spread, be given some spread throughout the state.

Of course, there is still some sentiment in the Committee for deletion of the referendum entirely but

it was felt unanimously if we are to have referendum it should be susceptible of use by the electorate.

To tie in this bracketed language we feel it loses all meaning and the Committee felt that this is the language which would do the trick but we recommended it not be included.

THE CHAIRMAN: Since this is a matter that was considered at the last meeting but is now asked by the Committee to be reconsidered, it will be submitted. I ask you to make your comments as briefly as possible. I think that the members of the Committee should be given the right to comment first. Professor Asper, do you want to add anything to what Mr. Gentry said about that?

PROFESSOR ASPER: No, except we were given a general directive at Easton to put in a provision insuring that it was a matter of interest to a substantial part of the state. This provision which seems to do that is something I adapted from the present Nebraska Constitution which requires in effect the 5 per cent be accomplished in approximately two-fifths of the

counties of the state. In that connection the amendment suggested in the last General Assembly, compromise amendment, changed it to, we had before us the one-half, not more than one-half should be from one county or Baltimore City. The amendment reduced this from one-half to one-fifth which is another way of treating it.

Since our directive was to put something in to insure that it was a matter of concern to a substantial part of the state, it seems to me this requiring that it be of interest to two-fifths of the counties of the state came closer to that.

THE CHAIRMAN: On the basis of the last election, can you give us an idea of what 5 per cent of the total number of votes would be?

PROFESSOR ASPER: About 23,000, I think.

MR. SAYRE: You are talking about the office regardless of number of candidates?

MR. SCANLAN: That is right.

MR. BROOKS: 37,000. At the present time 3 per cent --

MR. GENTRY: Five per cent would require

something around 40,000.

THE CHAIRMAN: Mrs. Freedlander.

MRS. FREEDLANDER: I realize at Easton we spent quite a bit of time on the subject of referendum and further realize this Commission is closely divided as to whether or not there should be a referendum. Some people feel we shouldn't and therefore it has been made difficult.

I would like to comment again that if we believe in this device as a democratic device, we should make it easier rather than more difficult. If we don't want it at all, we shouldn't make it so difficult that only strong pressure groups, strongly organized groups can get enough signatures for referendum. As it stands now, I believe itwould be too difficult for the ordinary citizen to mobilize and I have been a part of groups that have worked in this direction. It would be too difficult for the ordinary citizen to make use of this and it would become a weapon so to speak of highly organized groups probably of which some of us might not approve. There is a basic decision. The decision is

whether or not we want the referendum and if we want it let it be a democratic device and not the way it has been written in accordance with the wishes of the Commission at Easton.

THE CHAIRMAN: Mr. Hoff.

MR. HOFF: I agree, Mr. Gentry, I think this bracketed matter should be deleted.

MR. GENTRY: I would like to point out that Mr. Sykes who is not here feels it should be deleted as well. He participated in the writing of this.

MR. SCANLAN: One of the abuses I had in mind when I opposed any referendum procedure was the congressional redistricting petition where the Baltimore congressmen petitioned an act of General Assembly to referendum. If this bracketed matter is deleted, they would have had an even easier task. They could have solicited all their signatures from the City of Baltimore. Would that be correct, Mr. Gentry? Using the not so hypothetical example to which I refer, if the bracketed matter is deleted, those signatures, they wouldn't have had to go to Baltimore County, is that correct?

MR. GENTRY: Yes, except for Section 10 which says no plan for reapportioning --

MR. SCANLAN: That is true.

THE CHAIRMAN: Would that mean, I don't know the figures on this, would that mean that it would be approximately 10 per cent of the total number of registered voters in Baltimore City or 10 per cent of the total number of Baltimore City votes cast for Governor in the last election?

MR. SCANLAN: I don't know the answer.

MR. GENTRY: That would have to be approximately right because that is the weight of Baltimore City. It was just felt that if you get such a number of petitioners, 40,000, it should be a matter of such significance that it is referendable.

MR. BOND: I would like to ask this. The present Constitution says of whom not more than half shall be residents of any one county or Baltimore City.

Did the Committee consider whether this would be too much of a harness on the referendum process?

PROFESSOR ASPER: As I understood our

directive, I think Mr. Scanlan particularly, he didn't think that was severe enough so we were ordered to produce something which more clearly reflected that this was a matter of interest to the whole state and not just to say Baltimore City and Baltimore County as might be the case.

MRS. FREEDLANDER: The ultimate vote still has to be a state-wide vote majority of voters where it doesn't matter about the petition. You still have to have people to defeat it state-wide once the people have been given the privilege.

THE CHAIRMAN: Any further comments?

PROFESSOR ASPER: May I remind you again this is not the only possible restriction. There is no reason why if -- perhaps we could still reintroduce one-half or what Delegate Lowe proposed, the one-fifth provision, the amendment which got nowhere.

THE CHAIRMAN: In order to preserve that aspect of the question, I will submit the recommendation of the Committee that this language be deleted and announce in advance that if the vote is in favor and it

is deleted, I will entertain a motion if anybody cares to so move of substituting a different restriction or limitation. Any further discussion? Then the question arises on the recommendation of the Committee that the bracketed language in Section 9 be deleted. Are you ready for the question? All those in favor, signify by show of hands. Opposed. Motion carried 16 to 2.

I want to recognize anybody who desires to make a motion to substitute any other restrictive language in place of that deleted. Mr. Bond.

MR. BOND: I would propose, Mr. Chairman, that the language in the existing constitution which states that of whom not more than half shall be residents of Baltimore City or any one county be inserted in this section 9.

DR. BARD: Second.

MR. BOND: I will speak briefly to that if I may. I sympathize with Mrs. Freedlander and Mr. Gentry but at the same time the Commission did vote if we were to have a referendum, I don't think we should drop all restrictive language and I think that we presently

have which means you cannot get all voters from any one county or city. I think it is good, not too restrictive, and is worthy of consideration.

MR. SCANLAN: The point is if you don't do that, what you have here makes it even easier to petition a law to referendum than the situation now permitted under the present Constitution, which is bad enough.

THE CHAIRMAN: Further discussion?

DR. BARD: I think the provision underscores the significance that the issue is state-wide and important.

MR. SAYRE: I think the biggest restriction here is the 5 per cent. When you get a requirement of 40,000 votes under these terms that even if it is within one county or two that is a significant part of the state-wide referendum.

THE CHAIRMAN: Any further comment? Ready for the question? The question arises on the motion to insert in lieu of the language included in brackets which has just been deleted the phrase in the existing Constitution of whom not more than one-half are

residents of Baltimore City or any one county.

MR. CASE: Mr. Chairman, when Article 16 was passed, in 1914, I think the division between Baltimore City and the rest of the state was about 50-50, between Baltimore City and the rest of the state. That is no longer true and it will never be true again. Because Baltimore County with its almost 550,000 people now is rapidly approaching in size Baltimore City, it would not be without the realm of imagination to see that perhaps by 1980 Baltimore County will be as large as Baltimore City. I don't see the reason for making this distinction between Baltimore City and the rest of the State. It seems to me if you want this kind of provision, it ought to be that no more than X per cent should come from any one political subdivision.

MR. BOND: I will accept Mr. Case's amendment.

THE CHAIRMAN: The other Committees are making recommendations that for all purposes Balti more City be treated as a county so that you could cover the point by saying of whom not more than one-half come from any one county.

MR. SCANLAN: I move the Case amendment as articulated by the Chairman.

PROFESSOR ASPER: What percentage?

MR. CASE: I am glad you brought it up, I am careful not to mention a percentage. Now I raise the question I tried to raise before, namely, what should X be? I am not sure 50 per cent is right. Maybe it should be no more than 30 per cent. 50 per cent seems a very arbitrary thing and was hinged on this division of the voters back in 1914 but if you want to really achieve the spread state-wide, then I would think that perhaps 30 per cent would be a much more realistic figure.

DR. BURDETTE: I think Mr. Case may be introducing another problem. In reality in discussion if we carry the language not more than 50 per cent, I should think that in drawing up the petition at least three jurisdictions like counties would have to be considered, you can't possibly do it in two because you might accidentally run more than half. You have to do it in three so that in essence perhaps you are getting 30

per cent by your language not more than half. Or very close to 30.

MR. CASE: I raise the question. I haven't any deep-seated feeling about it. I think it is something you might think about.

DR. BURDETTE: I think we ought to face this. If we say not more than 30, we might be saying we have to have the petition signatures planned by the securers over five or six jurisdictions to be sure that they don't get thrown out on the 30 per cent rule. That would cut more broad than anything we have talked about this afternoon.

THE CHAIRMAN: Any further comment? I would like to make one comment then, if I may. Recommendations of other committees if adopted by the Commission will endeavor to provide that the Legislature shall not pass local legislation and that all legislation passed by the Legislature will be general legislation.

I think it is safe to say that at some point in the future there is, however, going to be a bill or bills introduced and passed that will be under the guise

of general legislation and bear all the earmarks of general legislation but by reason of the particular circumstances may be applicable only to one area not necessarily one county, may be one metropolitan area, or predominantly so.

I raise the question of whether under such circumstances the people of that area shouldn't have the right to ask the people of the entire state to vote in a referendum which is all we are talking about here.

In other words, I am raising the question of whether there ought to be any limitation, X per cent, or any per cent, and whether the effective limitation of the 5 per cent over-all isn't sufficient. Are there further comments?

PROFESSOR ASPER: May I ask a question? Assuming we adopt any one of these, whether the one-half or 30 per cent provision, is my understanding correct that this would be, I forget how it reads, one-half of the required number rather than one-half of the total? It would be ridiculous to have a hundred thousand signatures and 51,000 were from Baltimore.

MR. BROOKS: One-half of the required number.

THE CHAIRMAN: Mr. Bond, Mr. Case made a suggestion though not specific. Do you amend your motion?

MR. BOND: I would rather let it go at half.

MR. CASE: I am not pushing 30 per cent.

THE CHAIRMAN: I understand that.

MR. CASE: I threw that out for consideration.

MR. BOND: I realize the increase from three to five is a further curtailment. I think it is in order. I don't feel that the 50 per cent of having not more than 50 per cent from any one of the counties in the future is too great a deterent and getting the referendum if it is a worthwhile referendum.

DR. BURDETTE: That would mean at least three counties having substantial representation.

MR. CLAGETT: The referendum provided in the event of change of boundaries where the affected counties are three or less would be the area affected where it involves the change of boundaries of three or four, of more than three counties, I mean, it is felt

that the area affected would be the state as a whole consistent with the principle first stated.

I,therefore, in light of that kind of provision with respect to change of boundaries would favor that there be no limitation insofar as the number of signatures on a petition to activate the referendum procedure. Because if an area, a particular area, is the only one affected, as you indicated, it would be the area primarily concerned and interested in going ahead and voicing this or putting into effect this referendum procedure. In order to be consistent in principle, I think that there should be no restriction upon the number of signatures and simply let it be 5 per cent.

THE CHAIRMAN: Mr. Bond.

MR. BOND: May I ask Mr. Clagett -- it seems inconsistent, he says if two counties are affected, your Committee is going to propose that the two counties thereby affected would have a chance to vote, is that correct?

MR. CLAGETT: If there are three or less, the new area would have the right of referendum. If it

involves more than three counties, then it would be the state, feeling that the new area would be the state as a whole when you get into such a revision.

MR. CASE: That is where the vote would be taken.

MR. CLAGETT: Yes.

MR. CASE: But what we are talking about is where you gather the signatures.

MR. CLAGETT: As the Chairman said, one metropolitan area, even though couched in terms in effect that are general, is the only one that the legislation was being passed for, there is no reason why that area shouldn't activate the referendum and have that protection because referendum is,after all, nothing more than a protective device to the people who happen to be opposed to what is happening to them.

MR. CASE: Supposed to be.

MR. CLAGETT: Supposed to be.

MR. GENTRY: The Committee in recommending deletion of this, which is now passed, the bracketed language, there was no sentiment expressed by anyone for

the substitution of the one-half rule or anything. It was felt that the 5 per cent covered.

THE CHAIRMAN: The question now arises on Mr. Bond's motion that in lieu of the language included in brackets and now deleted that we include the phrase of whom not more than one-half shall be residents of any one county. Are you ready for the question? All those in favor, signify by a show of hands. Opposed.

MR. BROOKS: Nine, ten.

MR. SCANLAN: Could we have a recount?

MR. BROOKS: Nineteen here. A full house.

THE CHAIRMAN: Is there anyone desiring to submit any other motion for substitute language to take the place of the language deleted?

MR. SAYRE: Mr. Chairman, the proposal I proposed last time I didn't explain. I would like to talk about it again, if I may.

That is that in lieu of the 5 per cent, if we had a 10 per cent of the total vote cast for the successful gubernatorial candidate in the last preceding

gubernatorial election, we have sort of a rolling popular count.

THE CHAIRMAN: I am going to rule that that is a matter fully discussed at the previous meeting and voted down. If you want to press it, I will submit to a vote without debate the question of whether we shall reconsider.

MR. SAYRE: I suspect we can come back to it later on.

THE CHAIRMAN: Any further discussion? We are on Section 10.

MR. GENTRY: Section 10 delineates the restrictions on the use of the referendum and provides as set out on Page 8 that no plan for reapportioning the state,no law imposing a tax, no law making an appropriation for maintaining state government or for aiding or maintaining any public institution shall be subject to referendum. These are the particular matters it was felt at Easton should be withdrawn from referendum.

MR. SCANLAN: Mr. Chairman, I don'tknow whether the intention was to incorporate a statute of

the Legislature which would redistrict Congressional districts. These words, I suppose, have become a term of art. As it stands now, a plan to reapportion the legislative seats in the General Assembly could not be petitioned to referendum but it could be argued that because of the phrase used, reapportioning, a statute which redistricted the Congressional districts could be subject to referendum. I gather from one of your previous remarks that was not your intention.

PROFESSOR ASPER: We understood that the thing that was to be withdrawn -- perhaps we understood it too narrowly -- was state reapportionment.

MR. SCANLAN: I would now move that the following language be inserted in Line 2 following the comma after state: Including the Congressional districts thereof comma. It would make it perfectly clear that neither reapportionment of the legislative seats nor Congressional seats could be subject to referendum. That is the intention of my proposed amendment.

THE CHAIRMAN: Before we get on that exact language, I am bothered by the language, the phrase

reapportioning the state which seems awkward. I thought you were going to suggest reapportioning the representation in the General Assembly. Your motion would add to that phrase another.

MR. SCANLAN: I would have to change the language.

THE CHAIRMAN: That's why I suggested it now. Would that suggestion be acceptable to the Committee? Is that what was intended?

MR. GENTRY: The Assembly.

THE CHAIRMAN: Could your motion embody both points, Mr. Scanlan?

MR. SCANLAN: I would move that the initial phrase in the proposed section 10 read something like this. No plan for reapportioning the representation in the General Assembly or redistricting the Congressional districts of the state comma.

THE CHAIRMAN: Is there a second?

MR. MARTINEAU: Second.

THE CHAIRMAN: Any further discussion, Mr. Scanlan?

MR. SCANLAN: No, I just felt that some of the grossest abuses in my opinion of the referendum occurred in connection with the Congressional districting. Of course, I would hope that in cutting down on the right to referendum that that particular area would also be included in the proposed section 10.

THE CHAIRMAN: Mr. Gentry.

MR. GENTRY: Only that the Committee did not exclude redistricting. It just didn't consider it. It was acting on what was our directive at Easton which was to pick up as an exclusion reapportionment.

PROFESSOR ASPER: Nothing further.

THE CHAIRMAN: Any further comment or discussion?

DR. BARD: I would like to say I favor this proposal not because of the experiences which Mr. Scanlan has had but because the Legislative Department has now, its proposal is now set forth something that is a little more affirmative and protective in terms of these kinds of experiences.

THE CHAIRMAN: Any further comment?

DR. BURDETTE: I wonder if we can ask Dr. Bard to amplify that. I had intended to vote against the motion because I thought some of the action in redistricting really by the court had been most unfortunate. That is specifically in connection with Anne Arundel County. I would be very glad to have a chance to consider that kind of Congressional redistricting and splitting Anne Arundel County three ways. Mr. Bard speaks about some other protection. Does he have that in mind?

DR. BARD: Yes.

DR. BURDETTE: Maybe you have the thing covered.

DR. BARD: I think we do. We brought it up last time. I have this in mind. I don't agree with what occurred in connection with legislative reapportionment and redistricting was necessarily bad. I think the League of Women Voters'petition was a good one. I would not want anyone to believe that I was voting for this protective measure in order not to repeat that kind of experience. Were it not for the League's action, I

think we would have had far worse experiences. It opened up to the whole state the nature of what was occurring from my point of view.

I do believe the Legislative Department has set forth the kind of protective measures in its recommendation, I guess their recommendations in this respect, so that one need not be concerned about this particular requirement.

DR. BURDETTE: Does that include Congressional districting?

DR. BARD: No, it is not included. It is a good point.

MR. BOND: I can't understand why as a matter of political theory redistricting should not be subject to Congressional redistricting and perhaps gerrymandering should not be subject to referendum. I assume with Mr. Scanlan as to the practicality but as a matter of theory, I can't see why redistricting should not be subject to referendum.

MR. SCANLAN: I am opposed to the idea that anything be subject to referendum under the new

Constitution.

DR. WINSLOW: We have a legislative body which presumably will be responsive to the public will. I am willing to put great trust in the Legislature that will be created under the new Constitution. For that matter with few exceptions, I am opposed to putting too many curbs on their power to act in behalf of the people.

Since we are going to have the referendum which has been determined by the Commission, I am not fighting that battle. I would think those areas where we have had experiences which show a few people, just a few out of a whole state, who find it to their advantage to delay and suspend the will of the people until a friendly court can come to their aid, we ought to cut down on the possibilities of that in the future certainly in the field of apportioning, as the Committee did, and second from my field of view, the field of Congressional districting, we were four years with Congressmen at Large and for a half decade in a state of confusion, I would want to see the possibilities of

that recurrence minimized. Therefore, I will vote for my own amendment.

DR. BARD: I agree with Mr. Bond. As a matter of fact, I would tend to feel I will vote against that portion until after the commission as a wholehas approved our recommendation in respect to reapportionment because I do agree with you. I believe this is a critical area where petitioning has some real value.

MR. MARTINEAU: Mr. Chairman, it seems to me that the reason you would try to restrict the referendum in this area because, as you do for taxes and appropriation, this is an area, both redistricting and reapportionment, where the Legislature has to take action. You have to have this. It is not a question of either having a law or not. This is something you have to have. You just compound confusion if you permit the effect of these things to be delayed through referendum and all you do is keep going through the mill again and again and again if you don't put a stop to it.

It seems to me if you permit these things to be put to referendum and to be delayed in their effect,

that all you are doing is allowing either a court or some other group to fill the vacuum. I don't think that is the proper way to do it. The questions of reapportionment and redistricting are inherently political, it seems to me. There is no other group, I think, that should be given the task. For that reason I favor the restriction both in reapportionment and in redistricting.

MR. SAYRE: As I understand the motion that was voted upon, by Mr. Case, provides a very clean provision for reapportionment and redistricting and, therefore, it is very appropriate that we have this restriction in Section 10 and will have to defer further discussion on that until we get to the Legislature.

MR. MILLER: I agree with what Mr. Martineau said. We will wind up with Congressmen at Large if there is too much latitude.

THE CHAIRMAN: Any further discussion? The question arises on Mr. Scanlan's motion to rephrase the first clause to read no plan for reapportioning the representation in the General Assembly or redistricting the Congressional districts of the state. Are you ready

for the question?

MR. GENTRY: Would it be in order to offer no plan for legislative reapportionment or Congressional redistricting to shorten it up?

MR.SCANLAN: I think the Chairman objected to --

THE CHAIRMAN: No, he says Legislative reapportionment. Do you accept the amendment?

MR. SCANLAN: Yes.

THE CHAIRMAN: The question will arise on the motion to substitute for the first phrase the following. No plan for legislative reapportionment or Congressional redistricting comma. Are you ready for the question? All those in favor, signify by show of hands.

MR. BROOKS: Fourteen.

THE CHAIRMAN: Opposed.

MR. BROOKS: Four.

THE CHAIRMAN: Motion is carried fourteen to four. Any further comment on that section? I would like either the Chairman or the reporter to comment on

one thing which has not been commented on today but may have been earlier. You withdraw from the referendum the law imposing a tax. That is not in the present Constitution. Am I correct?

PROFESSOR ASPER: We were directed again,as I recall, at Easton, to include revenue raising measures as we noted in the comment and revenue raising measures we thought that this was a better expression for what we thought the Commission had in mind with that directive.

THE CHAIRMAN: Iraise the question because we didn't specifically discuss this language in July. Does anybody have comment?

MR. CASE: I remember what happened. I called your attention to the fact that the sales tax which was passed in 1947 was subject to a voluminous referendum petition. I think they had more signatures for that than anything short of the savings and loan bill, and that the court held in that case that twisting, I might say, the language of Article 16 considerably to reach the result in my judgment that a tax bill was a revenue bill within the meaning of what was here. It was my

suggestion last time that this be done to make it absolutely clear from now on.

THE CHAIRMAN: That is right, my only point was we didn't use or discuss the language, no law imposing a tax. I wanted to flag it for the Commission.

MR. CASE: That is right. There wasn't any language proposed. But I have another comment as long as we are making comments about this.

THE CHAIRMAN: This section?

MR. CASE: Yes.

THE CHAIRMAN: Go ahead.

MR. CASE: The present Constitution, in dealing with the fact that the act making appropriation, as distinguished from the tax is not referable, limits though that nonreferable part to an appropriation which does not exceed the next previous appropriation for the same purpose.

That is not in here. I have been turning over in my mind just how I feel about it. I am not sure. It might be something I would like to ask, if I may, whether the Committee consciously left this out,

why did they do it. The reasons may be perfectly valid.

MR. GENTRY: The reasons are short. Back in the Fourth Report substantively the proposed section eliminates the distinction between proposal made between appropriations exceeding and those not exceeding the next preceding appropriation.for the same purpose. In the opinion of the Committee, the fundamental purpose of this restriction is preservation of legislative power to make necessary provision for maintaining the state government and its institutions. The present provision appears,at least indirectly, to be an effort to employ a constitutional provision to restrict the Legislature in the exercise of its judgment in matters of prime legislative concern. We didn't take a fresh look at this. That is why I am referring back.

MR. CASE: The effect of it would be not so much, I think, in perhaps appropriations exceeding the last previous one where you had a previous one, but new appropriations, items in the budget bill which were totally new. Apparently the present Constitution could be read to mean that those kinds of appropriations are

referable. I personally think the deletion is a good one.

THE CHAIRMAN: Dr. Winslow, did you have a comment on this?

DR. WINSLOW: I was querying the term public institution. Does this mean to say that an appropriation by the State Legislature for a private institution such as a university shall be subject to referendum?

MR. GENTRY: Yes.

PROFESSOR ASPER: I would think so.

MR. SAYRE: Are courts regarded as public institutions?

PROFESSOR ASPER: Any agency of government.

THE CHAIRMAN: That would be state government?

MR. SCANLAN: I suppose what you had in mind is suppose the Legislature passed an omnibus bill, Maryland Aid to Higher Education Act, under terms of which private colleges meeting certain qualifications would get certain matching funds. Your question would be: Could that statute be referable and I suppose the

answer to that would be yes.

DR. WINSLOW: I wanted the definition of public institutions.

THE CHAIRMAN: Any further comment on Section 10? Let me go back to Section 9. I had noted a typographical error in one place I forgot to call to your attention.

In the fifth line next to the last word should be in instead of on.

I suggest to the Committee since this section comes back to you for reconsideration, that you consider in the third line on Page 7 the phrase the effective date for such law. Because it seems to me that may be in conflict with the last clause of Section 8. I don't think it need be discussed now. The whole section is referred back to you. Further comment? If not, if my notes are correct, we have either previously to today or today tentatively approved all ten sections of this article with the exception of Sections 4, 8, and 9, which are referred back to the Committee for reconsideration.

Now we will move to the consideration of

Sixth Report of the Committee on Elective Franchise and Declaration of Rights, subhead the Declaration of Rights. While you are hunting for your papers, we will take a short recess.

(Short recess.)

THE CHAIRMAN: Mr. Gentry, will you go ahead.

MR. GENTRY: The Sixth Report which takes in the whole of the recommended declaration of rights, unless, Mr. Eney, you would prefer not, I would like inasmuch as it only runs about one page or a little over, this introduction, I would like quickly to actually read through that because it embraces so much of the general thought that went into it.

THE CHAIRMAN: I think it would be desirable.

MR. GENTRY: The Committee's view of what should be included in the Declaration of Rights was expressed in its First Report to the Commission. It is deemed appropriate to restate some of the pertinent principles here. It was suggested on that occasion that the drafting of a state constitution be viewed as an act of creation -- the creation of a structure by and

through which the power of self-government may be exercised. A Declaration of Rights accompanying such an act of creation is designed principally to reserve and declare those rights of the people which no official, no agency, no transient majority may transgress. The vital and preeminent function of a Declaration of Rights is to define with all possible clarity those rights which the people wish to hold free from any diminution. Rights to be treated with this highest regard must be so formulated as to be capable of protection against even legislative interference. In our constitutional traditions and practice, this has come to mean rights selected, defined and formulated in such manner that they are capable of judicial protection at the petition of any individual.

In that connection it is important to keep in mind that a Constitutional Convention is not a super-legislature convened to supply all the omissions and correct all the errors of which the legislature may have been guilty over the past 50 or 100 years. Nor is a constitution super-legislation designed to establish

appropriate regulations for all human conduct and relations within the affected society for the next 100 years. A well-conceived constitution designs and creates the machinery of self-government through which the actual process of regulation must be carried on. Taken in this setting, a Declartion of Rights is an enumeration of those rights which the people, as individuals, which to hold beyond the power of government. It should not be a prologue to the constitution, nor a statement of what the agencies of government can do, nor a broadly stated directive as to how a government should do what it is given power to do.

With that I would like to then point up that we recommend, the Committee recommends that the Declara- of Rights not be separated from the body of the Constitution but rather that it be considered Article 1.

We move these various sections which start with Section 1 and we have a reason and meaning behind each of these as well as in the second part we take up the various articles of our present declaration and why they are included or why they are eliminated,

found unnecessary to be included.

THE CHAIRMAN: Do I understand you are proposing as the title for Article 1 Declaration of Rights?

MR. GENTRY: Yes.

MR. SAYRE: Mr. Chairman, because of the well-stated introduction here, it might be appropriate to have a unanimous vote accepting these principles to be passed onto the convention.

THE CHAIRMAN: I think these were the principles earlier stated in the previous report of the Committee.

MR. SAYRE: I am thinking as a perfunctory manner in which this was so nicely stated for the benefit of the Commission that the Commission was unanimously in back of this introductory statement.

THE CHAIRMAN: I don't know how that will be in the report but I have no objection to putting it to a vote. Is there a second?

(Seconded.)

Any discussion? Ready for the question?

All those in favor, please signify by saying aye. Contrary, no. The ayes have it. So ordered.

MR.GENTRY: Section 1 states simply as we can the principle of popular sovereignty in these words. All political power originates in the people and all government is instituted for their security, benefit, and protection. It is felt that this picks up in essence and in much shorter language all of what is embraced now in sections 1, 4, 6, and 7 of the present declaration.

THE CHAIRMAN: Any comment or question?

MR. CASE: Mr. Chairman, I will be frank to admit I don't know quite what we voted on, Mr. Sayre's motion. But if the vote was to accept the format of the Declaration of Rights as it has now been suggested in this report, then I want to be recorded as violently opposing it. Though I may be stepping on some toes around this table, I ask in advance your forgiveness, but I will do everything in my power to fight against it, not only here, but elsehwere. My reasons --

DR. JENKINS: It isn't clear what you are

against.

MR. CASE: I am going to tell you in a minute.

MR. SCANLAN: He has to work up a little.

MR. CASE: That is right. What I am against is the elimination for all time of some of the phraseology which is found in our Declaration of Rights. What you have here, Mr. Chairman, and members of the Commission is simply a sterile test tube like recital of rights which citizens have everywhere, which would be applicable anywhere to any state at any time. I submit that we in Maryland have a lot more in our Constitution and ought to preserve a lot more in our Constitution than just that.

I refer you to what I think is classical language in Article 6 of the Declaration of Rights which is to be summarily eliminated by this report. It says, That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, and all other

means or redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistence against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

I submit this language has come down in this state from the earliest of times and indeed was the language of Lord Cook in the Petition of Rights before Parliament, drawn upon by other great political philosophers, and has been in our Constitution from the earliest period of time. To summarily dismiss this language, which to me is beautiful language, to cast it aside would be tantamount in my judgment to casting aside the crossed botonee on our flag.

I think with great emphasis that the approach of this Committee has been wrong. I think this Committee could protect the rights of our people and retain as far as possible the language that has come down to us since 1776.

I therefore say that or would move that Section 6, I assume with the adoption of Section 1

inferentially Section 6 must go, to test my theory on this, I will move that Section 6 be not deleted from our Constitution.

THE CHAIRMAN: I don't think the adoption of Section 1 necessarily deletes Section 6.

MR. CASE: I raised that question before I made this statement. I came prepared to make a statement along this line. I didn't know when the appropriate time would be.

THE CHAIRMAN: This is the appropriate time. I merely point out to you I don't think adoption of Section 1 necessarily carries with it each of the recommendations following it as to the deletion of other sections. You may want to make a motion specifically with respect to Section 1 also, I don't know.

MR. SCANLAN: Could I ask Dick a question.

THE CHAIRMAN: Let me clarify the motion. You may want to make a motion with respect to Section 1 also. I will entertain your motion that Section 6 not be deleted standing alone irrespective of Section 1.

MR. CASE: I move that Section 1 be rewritten to contain as far as possible the language of Section 6.

THE CHAIRMAN: Is there a second?

DR. BARD: I will second it but I want to offer an amendment.

THE CHAIRMAN: Dr. Bard.

DR.BARD: I am interested in a counter-motion which would seek to preserve the language not just in Section 6 but in a large portion of the Declaration of Rights when it seems appropriate.

MR. CASE: I would accept that amendment gladly.

DR. BARD: This is the way I would like to see the motion read rather than for any particular section because I do think your main point from my point of view is well taken.

MR. SCANLAN: Mr. Chairman, I agree with Dick's main point. I don't concur in his criticism of the workmanlike job that the Committee has done but I think the language he has referred to in Section 6 plus some other eloquent phrases found in the earlier part of the

Declaration of Rights could be combined into a preamble which would explain the philosophy of the document which would provide that continuity with our ancient past which I think is your point. Would you accept that type of introduction?

THE CHAIRMAN: Let me cut across this discussion with this suggestion. I am afraid if we start doing what is being suggested with these various amendments, we will be trying in a Commission meeting to rephrase the whole document. Let me suggest that the Committee present the entire article without our voting on any particular section so that we can have at least a presentation by the Committee of its entire recommendations and then come back and take up each section and each recommendation in order.

MR. MILLER: Just a parliamentary inquiry. Do I understand the Chair that we will go through and the principles enunciated in the report we will act on?

THE CHAIRMAN: No. I am suggesting that initially the Committee present its entire report that there be no discussion or debate as to the various

sections as we go through it. If anyone has questions to ask, he can do that. Then we will come back and begin consideration of the report section by section.

MR. MILLER: And that a motion to embody the historic language that is appropriate would be to go to the Committee on Style or whatever.

THE CHAIRMAN: No, we can come back to that later but I want to have the whole report before the Commission before we start debating about particular sections.

MR. MARTINEAU: I had understood when this Committee, I believe, submitted its first report that we agreed that the Declaration of Rights was to include more specific language such as this but that we wanted to preserve much of the language,I believe, that Mr. Case and others are concerned about in a preamble. I thought you were directed to write one. I see no mention of it.

MR. GENTRY: We haven't got it yet. We will have a preamble.

THE CHAIRMAN: Present the report and we will

come back to take it up section by section.

MR. GENTRY: Section 2 reads as follows: "People shall have the right peaceably to assemble and to petition the government for the redress of grievances. Freedom of the press and freedom of speech shall not be abridged, each person remaining responsible for abuse of such rights."

That section which I just read --

JUDGE ADKINS: May I make the request: If possible, could the Committee Chairman as he refers to the Section in his draft relate it to the section in the existing Declaration of Rights?

MR. GENTRY: It is in the comments.

THE CHAIRMAN: The Commission members haven't had the chance to read it.

MR. GENTRY: The section I just read embraces the purport of Articles 13 and 40 of the present Declaration of Rights and uses, as you might recognize there, substantially what is in the first amendment of the U.S. Constitution.

I might also point out and refer you to these

articles in the U.S. Constitution as well that as far as preserving language, we have made an attempt to preserve the U.S. Bill of Rights language wherever possible.

Section 3,"No law shall be enacted respecting the establishment of religion. No person shall be restricted in the free exercise of religious profession and workship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief."

This picks up sections of the present Maryland Declaration of Rights, Articles 36, 37, and 39, some of which has been struck down by the Supreme Court. It also picks up, as you might notice again, the language of the U.S. Bill of Rights.

Section 4, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. Private property shall not be taken for public use without just compensation."

This incorporates, as pointed out in the

comment, Articles 19, 20, 23, and 24 and to some extent 32 of the present Declaration of Rights. It also uses virtually verbatim language of the U.S. Bill of Rights. The equal protection clause is added here which is not in the first ten amendments, of course. Nor is the present recommended equal protection clause in the present Declaration of Rights.

Section 5, "No bills of attainder, or ex post facto laws, or laws impairing the obligations of contracts shall be enacted, nor shall any conviction work corruption of blood or forfeiture of estate."

This is Article 17, 18, and 27 of the present Declaration of Rights and it adds the express prohibition of enactments impairing obligation of contracts which is not in the present Declaration of Rights.

Section 6, which is identically the Fourth Amendment of the U.S. Constitution. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon

probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

That is tying it in with the Declaration of Rights we now have, Article 26, but as I mentioned, it is verbatim from the United States Fourth Amendment.

Section 7. "Any person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have a speedy and public trial before an impartial jury, without whose unanimous consent he shall not be adjudged guilty."

This incorporates much of what is in Article 21 plus it adds public trial and it is again the language from the United States Constitution, the Sixth Amendment.

Section 8, "No persons shall be subject for the same offense to be twice put in jeopardy of punishment or be compelled in any criminal case to be a witness

against himself."

This section provides in substance what is in Article 22. It is virtually identical to the Fifth Amendment of the United States Constitution.

It is pointed out also the double jeopardy which is not in our present Declaration of Rights is added here and it is again the United States language.

Section 9. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

If memory serves me this is identical to Articles 16 and 25 of the present Declaration of Rights.

"Section 10, "The privilege of the Writs of Habeas Corpus shall not be suspended and the provisions of this Constitution shall apply as well in time of war as in time of peace."

This section includes the substance of Article 44 of the present Declaration and incorporates the prohibition found in Article 3, Section 55 of the Constitution.

Section 11, "This enumeration of rights shall not be construed to impair or deny others retained by the people."

This is identical to the concluding section or article of the present Maryland Declaration of Rights, Article 45.

THE CHAIRMAN: Before going back to the sections, will you comment on Mr. Martineau's statement of his understanding which, I think, is correct at one of the very early Commission meetings where there was discussion of a possible preamble.

MR. GENTRY: We do have a very rough -- and I can read it to you -- very rough working draft of a preamble but we are not ready to submit this to the Commission at this time. There are many facets that will be covered by the preamble.

PROFESSOR ASPER: May I ask a question of Mr. Brooks, I think. John, you talked at one time, I wasn't at the Commission meetings, of the possible plan of asking various persons in the state and otherwise to submit proposed preambles or submit suggestions as

to what should go into a preamble. Has any action such as that been taken? I wondered if this should go forth or whether the Committee alone was to undertake it.

MR. BROOKS: Only partially. We don't have much response on that. I think the Committee should go ahead at this point and we will still be able to come back to it if and when we get response to that.

MR. CASE: If that is what the preamble is going to be, I renew with more vigor than before the objection that I had to this whole thing.

THE CHAIRMAN: If what is --

MR. CASE: If what you are going to do is ask Professors of English and other people around the state to give you some ideas as to what a preamble should be to this Constitution and completely ignore the present Bill of Rights, then I say that the whole thing is just totally and one hundred per cent wrong.

THE CHAIRMAN: I don't think there was any suggestion from anybody that that be done.

MR. CASE: Isn't that what Mr. Brooks said?

THE CHAIRMAN: No.

MR. CASE: I am sorry and I apologize.

THE CHAIRMAN: He didn't mention Professors. He said interested groups to submit suggestions to the Committee but merely in the way of suggestion to the Committee.

MR. CASE: Of people aroundthe state.

THE CHAIRMAN: That is right.

MR. CASE: Why do we have to go to people around the state when we have what I am talking about right here?

THE CHAIRMAN: The suggestion might be to embody that language or not.

DR. BARD: I have been going through this and I do think that there are some portions of the Declaration of Rights which are historic and significant both. I think by way of illustration the point about Article 6 was a good point, excellent.

On the other hand, there are other portions of the Declaration of Rights where the language is not necessarily historical and it seems to me here the

Committee has done an excellent job in correlating some of these portions.

I do think as I have looked over this that it is possible to fuse those elements that are historic and have tradition and I think give a unique tone to the Maryland Constitution.

I am with Mr. Case, we don't want to lose this. I remember we stated earlier, I voiced this concept at the very first meeting. I don't see it as a confrontation. I myself believe it is possible to fuse some of the articles that have been left out, put them back, at least the language, and at the same time to capture through some generalized statement in a preface the thing that we are talking about.

Some of these statements I would not put back.

MR. CASE: I agree.

DR. BARD: They are confusing, do not add to our tradition.

THE CHAIRMAN: In order to move forward, I suggest we go back now and pick up each section, taking first for consideration and discussion the section as

proposed by the Committee and secondly for consideration and discussion the articles of the present Declaration of Rights which the Committee recommends be deleted in the notes to the particular section. For instance, we will consider Section 1 as it is drafted and then we will take up the Commission's recommendations that Sections 1, 4, 6, and 7 of the present Declaration of Rights be deleted.

MR. CASE: Mr. Chairman, I would make this suggestion. I don't think you can do it that way. I think that you are going to be sitting here all evening talking about these things and therefore to bring this matter to a head as to whether I have stated a policy which the Commission wishes to adopt or not, and let's find out right now, I will move that this entire matter be referred back to the Committee on Declaration of Rights with instructions to in each of the Sections they have come forth here with rights stated to use insofar as is possible the language of the present Declaration of Rights in each of those cases and where, as Dr. Bard says, the Committee feels that it is inappropriate or

the language has been repealed, of course, it should be omitted. But that a new draft of a Declaration of Rights embracing the principles that are in the Committee's report be submitted but phrased in the language of the present Declaration of Rights so far as is possible. I make that motion.

THE CHAIRMAN: Mr. Case, I suggest to you that the method that you have suggested will only result in considerable delay of the consideration of this report and end up with a section by section analysis exactly as we will have to go through today. There are a number of these sections that I am reasonably sure the Commission will want to approve in this form. There are a number of places where I am reasonably sure the Commission will want to include or substitute the language of the present Declaration. But to refer the matter back to the Committee with a broad general instruction such as you have suggested is only going to delay us for a month and end up with our having exactly the same thing.

MR. CASE: I disagree, Mr. Chairman.

THE CHAIRMAN: Unless you appeal the ruling of the Chair, I will have to rule we have to proceed this way. I think it is a matter of procedure. Do you want to put it to a vote?

DR. BARD: Why don't we give it at least a chance and at least try what you are suggesting? I think Mr. Case would go along with that.

MR. CLAGETT: It gives us a chance to think it over. We understand what he is talking about but whether we want to accept it or not, this would give us a chance to analyze it.

THE CHAIRMAN: I am mindful of the fact most of you have not had a chance to read the language and study this carefully. I don't suggest that the action taken today be the final and definitive action. I have had the advantage which you have not of having read each and all of these reports. I feel that we will make more time by having a discussion and consideration now. It may be that the matter will then be referred back to the Committee but if so, they will have much more meaningful instructions than just a

general instruction to try to incorporate the language of the present Declaration.

DR. BURDETTE: I move we proceed in that order.

THE CHAIRMAN: I have so ruled unless we have to put it to a vote.

MR. MILLER: Could I ask Mr. Case a question?

THE CHAIRMAN: Yes, sir.

MR. MILLER: Do I understand his authority? Would you modify the language that means the same thing which the Committee has very well done? Are you suggesting we ought to, for historical reasons, take the Maryland Bill of Rights when it says the same thing and they followed the Federal.

MR. CASE: In the first place, it is strange to think a State Constitution has to have in it a bill of rights which says exactly what the Federal Constitution does in line with recent decisions of the Supreme Court which makes the first ten amendments for all practical purposes applicable to the states.

MR. MILLER: I want to know if it is in there anyhow, is there need to change it?

MR. CASE: I think that if it were my choice, I would like to see us stick to the Maryland language that we have had from time immemorial.

MR. MILLER: Thank you.

THE CHAIRMAN: Are you ready to go ahead? Section 1.

MR. GENTRY: Section 1 as read is the statement of popular sovereignty. We have tried insofar as possible to avoid statements in this Section 1 of general aspirations and principles which although they might provide some guidance or objectives they are not actually enforceable and not actually statements of rights to be preserved, not actually susceptible of interpretation and enforcement in a court.

MR. SCANLAN: I just want to add one word. As it now stands, the statement is all government is instituted for their security, benefit, and protection. The people of the Third Reich and people of the Soviet Union were secure, had lots of benefits and as long as

the German army was powerful, were fully protected. One thing they didn't have that the people of this country have had, this state have had, one of the ends of government, indeed the fundamental end is liberty. I would add the word after their in the second line, the word liberty, comma, to precede the word security.

THE CHAIRMAN: Any comments?

MR. GENTRY: No special comment. We are going to go back and take all this under advisement, I would suspect. You are not looking for a final ruling on the declaration today. So we will take the comments into consideration.

MR. SCANLAN: Shouldn't we get some feeling of the Commission on the comments?

THE CHAIRMAN: We shouldn't just go generally.

MR. CASE: I will press my point.

THE CHAIRMAN: We have one motion here. It is just the one word.

MR. SCANLAN: Liberty.

THE CHAIRMAN: After the --

MR. SCANLAN: After the word their preceding

the word security.

THE CHAIRMAN: Any further comment as tothis one motion? Are you ready for the question?

MR. SCANLAN: I don't have a second for liberty yet.

MR. MARTINEAU: Second.

THE CHAIRMAN: Any further discussion of the motion to insert the word liberty? If not, the question arises on the question to insert the word liberty between their and security in the second line. All in favor, signify by saying aye, contrary no. Ayes have it.

Mr. Case.

MR. CASE: Mr. Chairman, I see no reason to eliminate from the Constitution the very first article of the Declaration ofRights which says: "That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient."

I might say also the peculiar capitalization of that particular clause I see no reason to change.

This brings me exactly to the point I made. What you have said here -- and I am not criticizing the Committee if the Committee wants to write a Constitution which would be applicable everywhere, in Kansas, or Nebraska or Nevada, fine, but we are writing one for peole of Maryland. We have a great heritage. You have said in essence what in effect Article 1 says. My point is why change it?

THE CHAIRMAN: Are you making a motion?

MR. CASE: I don't think it is necessary.

MR. BARD: I will make a motion if I may.

THE CHAIRMAN: I assumed you were leading up to moving that Article 1 of the present Declaration be substituted for Section 1 here.

MR. CASE: I so move.

DR. BARD: Second.

MR. MARTINEAU: Talking about the general problem it seems to me this very section is where the Committee gets itself in trouble because it departs

from its basic statement as to what it conceives the Declaration of Rights to be and by introducing this type of language into the Declaration of Rights, which we, I think, thought would be in a preamble or perhaps divided the Declaration of Rights into two different statements, one a declaration of principles of government and another one a declaration of individual rights, perhaps the way it should have been done. I am wondering why this was done here introducing this sort of statement where the basic idea was not to have this kind of statement in the Declaration of Rights.

PROFESSOR ASPER: We offered sort of excuse for that, perhaps put it in the wrong place. In the second part of the comments, we compare it with the present Declaration.

MR. GENTRY: Page 18.

PROFESSOR ASPER: We conceded this is not consistent with the approach suggested here but it seems to be a tradition of state constitutional conventions that lead off with a statement of principles. We thought one statement rather than four would be

proper.

MRS. BOTHE: As I see it, the proposed section 1 is not the identical thought to Article 1 of the existing Declaration of Rights which appears to specifically give the people the right to overthrow the government as also does Article 6.

Nowhere in the present or proposed Declaration of Rights is there any such sentiment expressed. I think it is a good one, one that should remain in the Maryland Constitution perhaps in the traditional language. I query the Committee the mission of any reference.

PROFESSOR ASPER: It is a peculiar kind of Declaration of Rights that contains the seeds of its own destruction.

MRS. BOTHE: This is an affirmative right, not merely a laudatory right of the type Bob Martineau might belong --

PROFESSOR ASPER: Is it to be in the Constitution itself though, or the right to overthrow a constitutional government becomes principle.

MRS. BOTHE: Contradictory but that doesn't take away the power or the right.

MR. SCANLAN: A natural law right.

JUDGE ADKINS: What is the matter now before us for discussion?

THE CHAIRMAN: To substitute Article 1 of the existing Declaration of Rights for Section 1 proposed by the Committee.

JUDGE ADKINS: May I ask a question? Is the compact theory of government still the generally accepted philosophy of government under which we are operating? It has been pretty well repudiated.

MR. CASE: What is that?

JUDGE ADKINS: The philosophy that a government is a compact among people. Is that current? I realize it was well ingrained in our political philosophies at the time this document was written. I am querying if it is now the modern concept. I don't know, I am asking Professors on the other side of the room.

MR. SCANLAN: What has been substituted in its place?

MR. CASE: That is what I want to know.

THE CHAIRMAN: Are you going to ask Dr. Michener?

DR. MICHENER: Shall I go into all that now?

MR. SCANLAN: Just one sentence.

MR. MILLER: Yes or no.

DR. MICHENER: I think the compact theory is not accepted now.

MR. SCANLAN: What is?

DR. MICHENER: You go into all the theory of why people obey. It is not a compact theory.

MR. CASE: Let me just come back to what Mrs. Bothe said to show you. I think this is very interesting, what was said about it in 1851 in the debates of the constitutional convention at that time. "He," meaning the gentleman who was discussing this very thing, "regarded the principle of peaceful revolution such as that now going on as a precious one. It would be a jewel that would attract the affections and confidence of the people and if placed out of the Bill

of Rights, while without it, sir, that Bill of Rights would be but an empty casket, unseemingly, valueless." I even read that with probably the original emphasis.

MR. SCANLAN: You sound like you were there.

MR. CASE: This is what Mrs. Bothe put her finger on, the very thing that keeps coming back. These things are going to be scrapped under this so-called Bill of Rights as we have it now. I think it is terrible.

DR. WINSLOW: May I point out, sir, that Article 1 of the present Declaration of Rights does not say peaceable revolution. It says abolish their form of government in such manner as they may deem expedient. Article 1 says we may take up our arms and upset the government and set up a new state. I doubt if we any longer believe this or sanction it.

MRS. FREEDLANDER: Mr. Chairman, at the risk of being out of order, I would like to make a few statements. We have met, the Declaration of Rights, met weekly, and we have discussed Thomas Aquinus and all philosophers and go down with Moses and the Ten Commandments. Something happens to people when they discuss

Bills of Rights and Declarations of Rights. Even lawyers take off their cloaks of enforcement and enforcement power and get emotional about it. When we first started out, I, as a layman, said why don't we have some of these nice things in the Bill of Rights. I was told by all and sundry lawyers who appeared at various hearings it is nice to want nice things but we have to find some other place for nice things. In this Bill of Rights we have to put in things that are enforceable. Now lawyers talking about this Declaration of Rights get emotional and forget what they said in some committees and said we want all these things. Granted these things are not Jefferson day speeches, Lincoln day speeches, politicians won't have any place to turn to except Thomas Aquinus. We should stick to a consistent policy of that Commission, namely, things that are enforceable, brevity, and have a consistent policy. If not, we better put tradition back, taxation and some other reports, elective franchise, we took tradition from that also. We should make up our minds whether this is to be something different from the rest of the

Constitution with an aura of Commandments about it or whether there is to be consistency in our thinking.

THE CHAIRMAN: Any further discussion?

PROFESSOR ASPER: Where do we stand?

THE CHAIRMAN: The question before the commission is Mr. Case's motion to substitute Article 1 of the present Declaration of Rights for Section 1 of the draft proposed by the Committee. Is there further discussion?

MR. BOND: I must confess I am sorely troubled by this whole discussion. I am a traditionalist but at the same time when you have a committee that met a couple of months and who think they have been following the instructions to have to completely overturn what the Committee has done troubles me sorely. I don't know where we can go if we vote aye for Mr. Case's motion. That bothers me. What happens? Does everybody go back to the drawing board? Is a compromise possible even if they do go back?

MR. GENTRY: Section 1 probably presents more problems hopefully than the other sections because in

Section 1 we departed, we concede we have, from the approach of an enforceable Declaration of Rights, expression of delineation of those rights that are preserved. If that idea is to be scrapped, then we have to go back to the drawing board. If we can retain that, I think this section 1 is the one section that is going to present more problem than any other because here we have attempted to express some of the, this expression of sovereignty, which is a departure from expression of truly enforceable rights. We have incorporated as we go through Article 1 you will see everything in Article 1 of the present Declaration is in, in different language, true, but it is in our present suggested Section 1 with the exception of the right of revolution which we felt not one we want to recommend.

MR. SCANLAN: I think the Committee would have avoided possibly some of the objections that have been raised here if they had preceded their draft with a good preamble incorporating some of the exhortations to which Mr. Case referred including the right of revolution a theoretical right. They haven't done that.

We have this argument.

MR. CASE: That is why I thought the whole thing could be obviated by sending it back to them and letting them bring in something.

MR. CLAGETT: I have no difficulty in voting against the substitution of the present Article 1 for the new section because I do think that it has been made clear that the philosophy of government has changed from that day to the present. Certainly now the attitude of all people should be peaceful rather than violent. This does seem to give an endorsement to violence . Contrary to what I say now is ingrained.

I have great difficulty with the fundamental propositions that have been raised by Mr. Case where he says that really by adopting the eleven sections which expose the new Declaration of Rights we are abandoning historic language and we are abandoning mile posts which are distinctive of our whole state as distinguished from those of Alaska and Hawaii and some of the newer ones as well as some of those that may be in between.

I would like to ask the Chairman this question. Since he has had the opportunity to review the eleven new sections against the 45 old sections, whether he was able at that time and as a result of that study to reconcile the two approaches that are manifest here and come up with something that does sort of fall in between where you do retain some of the traditional without being a piece of furniture in a modern apartment that was picked up in England 500 years ago.

THE CHAIRMAN: I think it is possible in some instances to incorporate ideas from both more than is done in this draft. Some of the ideas are completely and wholly irreconcilable. Mr. Case's motion to substitute Article 1 for Section 1 and, I take it, a similar motion for Article 6, presents a matter of principle which you could state succinctly as to this, which is whether the Declaration of Rights should contain a recital of the right of revolution by forcible means, if I may use that term, as opposed to change of the form of Government by constitutional means.

Certainly Article 1 and Article 6 are

predicated upon the assumption that the people have the right to change the form of government by revolution by forcible means and that is completely irreconcilable, I would think, with the concept of Section 1. I take it that in voting on this question of substitution of Article 1 for Section 1 we are not so much voting on language at the moment as you are voting on the principle of whether you want the Declaration of Rights to preserve the right of forcible revolution or whether you do not. I take it, Mr. Case's position is that he wants the Declaration of Rights to preserve that right.

MR. CLAGETT: I had no difficulty in voting against the substitution of 1 and 6 for the rewrite but I feel that I am getting sort of pushed out on the end of the diving board where I am not voting for what I want to vote on which is why I raise the question.

THE CHAIRMAN: Let me high-light my answer to you again. I see nothing in conflict between Section 1 and Article 4, for instance. You could incorporate the language of Article 4 which is traditional for Marylanders in this Declaration of Rights without

doing violence to anything in the present draft.

I merely say that the ideas behind Articles 1 and 6 of the present Declaration of Rights are,as I read them, statements of principle of forcible revolution.

MR. CLAGETT: I agree, Mr. Chairman, but that is where I feel I am getting pulled away from the point made by Mr. Case where, as I understood his point, it was not the philosophy as much as the preservation of the language.

THE CHAIRMAN: I will ask him again. I thought,Mr. Case, you were advocating the philosophy of Sections 1 and 6 as well as the language.

MR. CASE: I am advocating primarily the language and not the philosophy although I pointed out that after Mrs. Bothe made the point which I really didn't make that this particular substantive right was omitted in the draft of the Committee's report in Section 1.

Let me state it again,as clear as I can, that I think what is being done here is to scrap the language which is part of the Maryland heritage and I say that

insofar as it is compatible with the rights that the Committee has expressed, I think, the old language ought to be used, not the new.

MR. CLAGETT: My idea is compatible with that.

THE CHAIRMAN: Would your motion be perhaps to substitute the first clause of the present Article 1 leaving out the second clause?

MR. CASE: Mr. Chairman, I again say that to go down this thing and try to pick out the philosophy of which clause ought to be where and dove-tail with what section of the Committee's report is impossible to sit here and do that. If this motion loses, as it may very well lose, then I would move that the philosophy of Section 1 be accepted by the Commission but that it be returned to the Committee to phrase it in the language of the present Declaration of Rights insofar as that is possible.

THE CHAIRMAN: Let me suggest to you, Mr. Case, there are two philosophies in two clauses of Article 1. Not necessarily the same. If you want a vote on the

principle of whether the Commission wants this Committee to include in the Declaration of Rights the philosophy of the second clause -- namely, of violent revolution, it certainly can be submitted. But I am just trying to find out --

MR. CASE: That is not my point. I don't care about it.

THE CHAIRMAN: Then the first clause is the clause you are particularly urging?

MR. CASE: I will read it.

DR. BURDETTE: I should like to express my disagreement with the interpretation of the Chair with regard to the second clause of Article 1 in the present Declaration of Rights. Indeed if I may, I will express some disagreement with the interpretations of modern reading that we seem to have here.

It is true that the compact theory of the origins of government has been largely discredited but really on the ground that nobody could find the compact. There is nothing wrong if we wanted to do it in saying this is our compact because one can find it.

I think if you are going to read this language that all government anywhere in the world -- it doesn't say that originates from people and is founded on compact -- that is discredited. If we want to say in Maryland we have a compact that this Constitution is a compact between the people of Maryland and those who are elected to represent us, we are saying something which does have a powerful meaning and also supports the second clause which I submit really doesn't unless one wants to read into it that anything about violent revolution, it seems to me on the contrary that it does not. It says that they the people have at all times the inalienable right to alter, reform, or abolish their form of government in such manner as they may deem expedient.

It seems to me this doesn't say that some group of people who decide to start a revolt have a right to over-rule the whole of the people. That a fair test of this language means that the people adequately represented as a totality have a right to alter the government. It seems to me that is immensely important

in our state.

I am saying this because while I do feel that in a number of cases the Committee has better language here -- I support Dr. Bard's position -- than does the present Declaration of Rights, I don't think this is easy, a notable one is in Article 21 where the Declaration of Rights says people shall be allowed counsel, while Section 7, getting ahead, says that they shall have, to have the assistance of counsel. That is a lot stronger, I think, Mr. Case, than the old language.

I am speaking, I think, perhaps in support of Mr. Case's basic position that this language, of enormous value in heritage, can be preserved to great purpose but that it can also be tightened in places.

MR. CASE: I agree.

THE CHAIRMAN: Professor Burdette, may I ask you a question along the same line? Do you read the last part of Article 6 in the same manner or different?

MR. SCANLAN: It is clear authorization for violent overthrow of the government.

DR. BURDETTE: Yes, I think that again the language perhaps can be improved. I think it was probably written not with any idea that someone is going to start shooting at the governor and Legislature but rather what I really subscribe to and I think it is an immensely modern liberal position that if the people of the State of Maryland want to say that the way our government is being administered is wrong, they have a right to say it. Maybe we need the word peaceable in it but I don't see anything in here which says not peaceable. I think resistance has historically had the view that if we want to get up and say that public housing is not being administered correctly in this state, we can shout it from the roof tops. I like to preserve that kind of meaning which I see in the latter part of Article 6.

THE CHAIRMAN: Mr. Case, in order to save time, might I su gest if this meets with your approval that you amend your motion to refer Section 1 back to the Committee with the direction that the Committee redraft Section 1 to include the substance of Articles 1 and 6

without any provision for violent overthrow, if that is what your position is, as I understand it.

MR. CASE: That is right.

THE CHAIRMAN: Would you make that motion?

MR. CASE: I so move.

MR. SCANLAN: Since I seconded it, might I add, include the substance and as much of the original language as possible.

THE CHAIRMAN: Do you accept it?

MR. CASE: Yes.

MR. GENTRY: Before doing that, may I point out some of this beautiful language in Maryland Constitution is not unique to Maryland. It appears verbatim in other Constitutions and this may have swayed us in our consideration that we were discarding something that was traditional. Those words are in the New Hampshire Constitution, for instance, and just in one of our pamphlets just what they said about it, you will recognize this from the New Hampshire, you can recognize it as being in Article 6, same words, "whenever the ends of government are perverted, and public liberty

manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistence against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind."

They commend few, if any, of such provisions are judicially enforceable. We felt it was not language specially and pecularly Maryland's forefathers developed but was probably a justification of the revolution which had occurred just prior to this. They were justifying their actions in 1776.

MR. SCANLAN: I will vote against Mr. Case's motion, not that I am against the flag waving that is embraced therein, including going a step further than he, the right to violent revolution as the forefathers stated but I think all that exhortation should be in a preamble rather than the substitute for Section 1. On that ground alone, I am against it.

THE CHAIRMAN: To avoid that kind od dilemma, let me again suggest if Mr. Case's motion embraces the

reference back to the Committee to include the substance as much as possible of the language of Articles 1 and 6 without provision for violent overthrow of the government in either a new section 1 or preamble and report back to the Commission;will that be accepable?

MR. CASE: It is acceptable. It still has the principle I am fighting for.

THE CHAIRMAN: Acceptable, Dr. Bard?

DR. BARD: Yes.

MRS. BOTHE: Could we add Article 4 to the list.

THE CHAIRMAN: Mr. Case, will you add Article 4 to your list?

MR. CASE: One, four, and six.

MR. HAILE: How about 7?

MR. CASE: I have to study 7.

THE CHAIRMAN: Could you say the first clause of 7?

DR. BURDETTE: Frequent doesn't mean annual.

MR. CASE: Of course, the last clause, I don't want to go on record --

THE CHAIRMAN: The last two clauses the Committee has reported on the deletion.

MR. CASE: I agree with them on that.

THE CHAIRMAN: The motion would be to include the substance of Articles 1, 4, 6, and the first clause of 7 without provision for violent overthrow of the government in either a preamble or new section or sections.

MR. SCANLAN: Or combination.

MR. CASE: In the language as contained here?

THE CHAIRMAN: Yes.

MR. SAYRE: I had not anticipated all this discussion but I do interpret the fact that we unanimously adopted the introductory remarks here that this is a guidance to our procedure, that it is confined to articles that are judicable or sections. If any of this inclusion should be contrary to this, I think we will have to suspend or alter the rules accordingly.

THE CHAIRMAN: In the interest of saving time and probably violating all rules of parliamentary procedure, I will rule if this motion carries, it has the

effect of so modifying the first motion. Any further discussion of this question?

JUDGE ADKINS: I have one suggestion with regard to one. I object to the word security. You don't conceive it as a function of government to provide for the security of the people. I think it is a function of government to provide for liberty, benefit, and protection. The word security is a new word in this Constitution. I don't think it should be here. It involves a paternalistic approach which I don't think ought to be recognized constitutionally.

MR. CLAGETT: I see the Eastern Shore cropping up here. Medicare, welfare, unemployment insurance -- you can't get around them all.

JUDGE ADKINS: Don't have to write them in the Constitution.

DR. BARD: I want to let the Judge know security was present and if he turns to Page 3, he will note that it was. It refers to safety rather than --

JUDGE ADKINS: That is using it as a different word.

DR. BARD: It is used here not in the sense of social security in the modern term. The word security was used.

THE CHAIRMAN: Any further discussion of Mr. Case's motion? Ready for the question?

MR. MILLER: Would the Chair please state the question?

THE CHAIRMAN: The motion is to refer back to Committee Section 1 of the proposed draft with instructions to prepare either in a preamble or in one or more sections or a combination the substance of the present Articles 1, 4, 6, and the first clause of Article 7 of the Declaration of Rights without provision for violent overthrow of the government and report back to the Commission. Are you ready for the question?

DR. BARD: I have a question in regard to that. I would tend, because I think this is going to come up in regard to other sections, I would tend to feel we ought to leave it to the Committee and not say to them to incorporate all this but I would like to amend it to read where in their view it seems appropriate.

THE CHAIRMAN: I think this is implicit in the use of the word substance.

DR. BARD: As long as we understand that.

MR. CASE: Appropriate in all places where it can be used.

DR. BARD: This is implied.

MR. CLAGETT: I point out to Judge Adkins in the preamble just above Article 1 on Page 3,last full line, the word security does appear preceded by permanent security.

JUDGE ADKINS: Security of the state.

MR. HOFF: Security of the Constitution and state.

THE CHAIRMAN: Ready for the question? All in favor raise their hands. Contrary. Motion carries 13 to 4. It is a few minutes past 5:30. We we will adjourn now. Dinner at six.

(Recess.)

CONSTITUTIONAL CONVENTION COMMISSION

EVENING SESSION
August 21, 1966 - 7 p.m.
University of Maryland, College Park, Maryland

Appearances as heretofore noted.

Reported by:
W. P. Banister
and
N. Swetland

THE CHAIRMAN: Can we come to order. We move now to a consideration of Section 2. Before we go ahead, let me announce that it is impossible for Dr. Bard to be here at all tomorrow, and I am most anxious to have the Commission act on his Report. Therefore, we will go ahead with the discussion of the Declaration of Rights for about an hour. If we haven't finished in that time, then we will suspend the discussion on Declaration of Rights and move on to a consideration of the Report on the Committee on the Legislative Department.

This means if there is time tonight, we can come back to the Declaration of Rights. If not, we will take it up first thing tomorrow morning. This means that we will not be able to take up the Report of the Committee on Finance and Taxation tonight in all probability.

Mr. Case can't be here tomorrow morning, but can be tomorrow afternoon, so we will probably take that up tomorrow afternoon.

Now, Mr. Gentry.

MR. GENTRY: Section 2. Section 2 provides that, The people shall have the right peaceably to assemble and

to petition the Government for the redress of grievances.

THE CHAIRMAN: Get the rest of the paragraph. That is the somewhat modified language of the First Amendment. It is a little farther than the First United States Amendment because the First Amendment says, Congress shall make no laws, whereas we preface ours with the words, People have the right, and it is broader in the sense it relates not only to the passage of laws but all acts. This pertains in substance to 13 and 40 in the Declaration.

MR. CLAGETT: Here is a good point. It seems to me that if we are trying to capture some of the spirit of Mr. Case's proposition, peace is, or however we may describe it, we could use, All men shall have the right peaceable to assemble and petition. As we find in Article 13 that every man hath, and it seems to me here we do see possibly a chance to capture the flavor and spirit without actually adopting the philosophy which has been passed over and left behind. I don't propose that. I merely point it out. I am not suggesting we change it, but it is food for thought.

MRS. BOTHE: Where does the last phrase, Each person remaining responsible for abuse of such rights come from? It doesn't make much sense to me. Article 40 dealing with liberty of the press speaks of abuse of that privilege which I think is somewhat better grammar. for the abuse of such rights. I think it could be better expressed and again this may be a matter for the Committee on Style. I don't disagree with the sentiment.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I suppose the accommodations if a person is to publish something adjudged libelous, then he has abused the privilege and will be held civilly responsible. I suppose that is the original intention, but I agree the grammar could be improved.

MR. CASE: So that the matter can be brought forward, I make the same motion with respect to Section 2 as I made with respect to Section 1, with the necessary institution of section numbers in the Bill of Rights. Maybe you can press the motion better than this, Mr. Eney, if you care to do so.

THE CHAIRMAN: Let me ask you a question, be-

cause it may be that what you are seeking by your motion is directly contrary to what the Committee purposely sought here, and you may want to submit that question.

The language in Article 13 and Article 40 in several instances is precisely the kind of language that the Committee, as I understand it, has deliberately sought to avoid the use of; hath, for instance -- Every man hath the right to petition, and the use of, ought, in several instances. Now, are you suggesting or was it your idea to suggest a motion that that kind of language be preserved?

MR. CASE: I think the language in the Declaration of Rights that the language that, Every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects is good language, and it is my motion that this Section be referred to the Committee with the instruction that where the language meets the point that they have made, that the language in the existing Declaration of Rights be used.

THE CHAIRMAN: All right; any second to the motion?

MR. CLAGETT: I will second.

MRS. BOTHE: I would like to ask Mr. Case a question. The proposed language says, shall, the existing language says, ought. Obviously, shall, is much stronger than, ought. Does he mean by that, that we are to weaken the proposal, just in the name of tradition or for any other reason?

MR. CASE: I think you can argue, Mrs. Bothe, about, shall, and ought, as long as you care to keep the argument going and neither party will convince the other that he was right. This is a matter of semantics. The word, ought, has been in the Constitution for these many years, and I don't see any reason to change it.

THE CHAIRMAN: I would like to give the Committee in each instance the opportunity to make the first comment. Mr. Gentry?

MR. GENTRY: Speaking again on this very same subject, the language of Article 40 was carefully studied, and it is felt it is considerably weaker than what is proposed. Certainly, when you grant a right with such language as we have in our proposed Section, it goes much

farther towards a determinable right which is enforceable by a court than you do with a somewhat innocuous statement, liberty of the press ought to be preserved, how would a court enforce it? It's got built-in reservations to it, the word that suffers is the word of, ought, which doesn't mean the same as, shall.

THE CHAIRMAN: Mr. Scanlan: Certainly, in another respect along the lines of what Mr. Gentry just said, Section 2 guarantees the right peaceably to assemble, which is not guaranteed in the present Constitution, and I suggest the events of recent days suggest this is not an academic right, and in that respect, this second respect, Section 2 as proposed by the Committee is an improvement over what we have in the old Constitution.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would suggest that Article 13 which is superseded should not go into the new Constitution. That says, Every man hath the right to petition the Legislature to redress his grievances in a peaceful and orderly manner. I think that is an example of the language that can be left stand.

THE CHAIRMAN: Mr. Case?

MR. CASE: I would like to hear some more discussion on that point. The Committee in its Report notes that it is, the right to petition the Legislature, which we now have and which is known, right to petition the Government. What is the right to petition the Government? How do you petition when you petition the Government? Do you petition the State Department of Assessment and Taxation, and suppose you tried to petition the Legislature. Would they say that, We are just a part of the Government and therefore you can't petition us, you have to petition the whole Government? To me, there is a distinction here which has not been adequately explained as far as I am concerned.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Certainly, petition the Government, is far broader because it embraces actions brought not only against the Legislature in the existing Section of Article 12, but allows for an action of mandamus, an action of injunction and so forth. Those are the types of actions against other branches of the Government which

would be envisioned by the general power to petition the Government.

PROFESSOR ASPER: First Amendment to the Constitution of the United States provides in its final clause, and petition the Government for redress of modality grievances. To the best of my knowledge, there are no such gaps as Mr. Case has suggested has ever arisen under the Constitution of the United States.

MR. CASE: Everybody can petition the United States in a

MR. GENTRY: Any action of mandamus, I would think, is a broad aspect a petition of the Government.

THE CHAIRMAN: I can suggest one that comes to mind, the proposed Judiciary Article confers on the Court of Appeals and the chief justice, rule making power that is not conferred on the Legislative Branch and conceivably you could have a petition to the Supreme Court grievance in connection with the rules adopted by the court that would not be a petition to the Legislature.

MR. CASE: But you could do that, certainly, anyway, couldn't you?

THE CHAIRMAN: Well, I don't know. I am suggesting only that petition to the Legislature is not the only body that you might want to petition.

MR. CASE: I think, though, that the right to petition the Legislature being definitive as it is has real substantive meaning. I recall at least in one instance in modern times when the Legislature was petitioned, and that was the controversy over Assateague Island. So that it has meaning above and apart from other wellknown legal rights such as the right to file a petition for writ of mandamus or the right of any attorney to file with the Court of Appeals what he suggests may be an inappropriate rule that has been suggested.

As a matter of fact, the Court of Appeals, of course, requests in its rule making power comment from the members of the Bar in this area, so it seems to me that all of these rights are inherent in our form of government, but the clear right to petition the Legislature is something which may be diluted by this rather than strengthened.

MRS. FREEDLANDER: We have in the existing

Article 6, all persons are vested with this right and are accountable for their conduct. Under our new proposed Constitution, we are strengthening the office of the Executive. We are strengthening the Legislature. The word, government, here in this instance means not only to petition the Legislature, but you would petition the Governor also who will be given new and stronger powers and that is why we are using the word, government, instead of just limiting it to Legislature. You are saying in other places in Judge Adkins' Report that the governorship is where the buck stops, and won't this strengthen that position? Won't this be consistent with our strengthening the office of the governor?

MR. MILLER: Just a parliamentary query. Do we have to have a constitutional authority? Can't any citizen or if it requires a constitutional provision, shouldn't it be broader than that? Don't we have the right to petition the State Tax Commission or any of the State bodies? Why not just say that you have a right to petition the appropriate or whatever it might be. I don't see why we have to get into an argument whether you

petition the Governor, the Legislature, or even the Comptroller of the Treasury. You have a right to petition if you have a right of aggrievance.

PROFESSOR ASPER: All of that is embraced by petition to the Government.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I act on the sentiments of Mrs. Freedlander. You will recall the Sacco-Van Zeita case, I assume, that the Governor of Massachusetts was besieged with petition for clemency for those men. Now, absent a provision of this sort, it is not impossible for a legislature to pass a law saying any petitions addressed to the Governor shall be by individuals only, and you can't have collective petitions. They could pass such a law, but this type of provision in the Constitution, they can't. Such petitions would have to be entertained by the Governor, and I assume that is what the Committee had in mind to broaden the right of petition. On that ground, I am for it.

THE CHAIRMAN: Any further discussions?

MR. BOND: What is the question?

THE CHAIRMAN: The question arises on Mr. Case's motion to substitute the substance of Articles 13 and 40 of the existing Constitution for Section 2 in the draft proposed by the Committee.

MR. BOND: Point of information.

MR. CASE: My motion is that this matter be referred to the Committee with directions that the language contained in Sections 13 and 40 be substituted for the language contained in Section 2 where this would be appropriate and would not dilute what they are trying to do.

MR. BOND: My point of information is, I think we should be definitive. I like to always agree with Mr. Case, but I can't here. I think the Commission should take the position of whether we should go with the word, government, or word, legislature. I think the Committee should be instructed as to which word would be appropriate under these circumstances.

MR. CASE: I might say in answer to that, that I would have no objection to the word, government, if perhaps you put each branch of the Government.

DR. BARD: I would just like to explain the fact that in general I am in agreement with Mr. Case that where the language of the Constitution, the present language of the Constitution states clearly the concept that the Committee is attempting to set forth, then I think it is better to use the language of the Constitution. In this case, I believe that it embraces more than language. It defines ideas and for this reason, I believe that the wording as stated here is superior to the wording as it is noted, the ideas are more clear.

THE CHAIRMAN: All right, you ready? Mr. Case?

MR. CASE: So you can be definitive, what I would have in mind if this word, referred, would be then appearing in the discussion, the people have the right peaceably to assemble and petition each branch of the Government for the redress of grievances, and then come in to the second sentence that, every citizen shall be allowed to speak, write, and publish his sentiments on all subjects being responsible for the abuse of that privilege.

MR. MILLER: You wouldn't want to change, each,

to, any? You wouldn't want to petition the whole three branches?

MR. CASE: Any?

MRS. FREEDLANDER: Does that mean a person who is a non-citizen cannot speak freely? Is that the meaning of that? I think aliens are -- this is only limited to citizens.

THE CHAIRMAN: I am unclear now as to the motion, Mr. Case. From what you said, I take it that you are suggesting that the first sentence of Section 2 remain as the Committee has suggested it except to insert after the word petition, the, and before Government, all branches.

MR. CASE: That is right.

THE CHAIRMAN: And you are suggesting?

MRS. FREEDLANDER: Any branch.

MR. SCANLAN: Any branch of the Government, not all.

THE CHAIRMAN: And that you would suggest that the second sentence be deleted and that there be substituted for the second sentence the second clause of

Article 40 except to change the verb, ought, to, shall. Is that correct?

MR. CASE: And if the Commission thinks that the words, every citizen of the State, is too restrictive, I would have no objection to saying, all persons shall be allowed to speak, write and publish.

THE CHAIRMAN: I think we will make more progress if we split that into two motions, and make your first motion as to the first sentence.

MR. SAYRE: So moved.

MR. SCANLAN: I second.

THE CHAIRMAN: Mrs. Freedlander?

MRS. FREEDLANDER: I would like to ask Mr. Case a question with regard to, any branch. Would that include divisions such as the Department of Education which is not a branch or the State Roads Commission which is not a branch, or the State Taxation Assessments, would that be considered a branch?

MR. CASE: What I am suggesting here is that, the right to petition the Legislature, would/be clearly preserved by this language, but it would be broadened to

include any other branch, could filter down that far.

THE CHAIRMAN: Would it perhaps be better to say, petition the Government or any department thereof?

MR. SCANLAN: Better?

MR. CASE: I would have no objection to that, so long as it is clear that the right to petition the Legislature still exists.

THE CHAIRMAN: Mr. Gentry?

MR. CASE: As such.

THE CHAIRMAN: All right. Mr. Gentry, do you and Professor Asper have a preference, thinking only of the first sentence now for the language, petition any branch of the Government, or the language, petition the Government or any department thereof.

MR. GENTRY: I frankly just don't like either one. And you see, in all this you see everytime you try to improve on the old language, you get into more and more problems, and that is why we have what was recommended. But that will be demonstrated more clearly as we go on.

THE CHAIRMAN: So that I have a motion to

submit. Do you have a preference as to those two if the Commission wants to make one or the other changes?

MR. GENTRY: Or any department, I suppose, would be better than, branch. Branch, I think, suffers in that it is limited to the Executive legislative and judicial.

THE CHAIRMAN: All right, that will be your motion, Mr. Case.

MR. CASE: Yes.

MR. SCANLAN: I still second in that form.

MR. BOND: If this motion is defeated, is it correct, sir, then the Committee's language would be before the Commission for vote?

THE CHAIRMAN: That is correct. Any discussion as to the first sentence of Section 2?

MRS. BOTHE: I would like to ask Mr. Case -- I had assumed on reading this that government encompasses all its branches and departments. Any reason why it doesn't?

MR. CASE: I think it could be easily argued that the right to petition the Legislature without

petitioning other branches would be lost. You are not petitioning the Government when you petition the Legislature.

MRS. BOTHE: I had thought you were. Does the Committee understand it that way?

PROFESSOR ASPER: Never did know.

MRS. BOTHE: Then you don't feel this wording includes petitioning?

PROFESSOR ASPER: Includes everything.

THE CHAIRMAN: Professor Burdette?

DR. BURDETTE: The reason I would like to support Mr. Case's view, you could pass a law this Constitution would mean it would be sent to the Secretary of State or someplace else, and there would be no right for a citizen to address any branch of the Government or department of the Government that they, themselves, thought effective to address.

MR. GENTRY: And if the Legislature did that, it could be attacked as being unconstitutional, and the courts would say No, government means any branch.

MR. CASE: How do you know what the courts will

say?

MR. GENTRY: We can predict that.

THE CHAIRMAN: We are not getting a record when we have discussions like this. Any further discussion on the motion? Ready for the question? The question is on the motion to amend the first sentence of Section 2 by adding after the word, government, the words, or any department thereof. You ready for the question? Those in favor, signify by raising hands. Opposed. The motion is lost 8 to 10.

Now, is there any further motion with respect to the first sentence? Mr. Bond, did you say you wanted to make a motion with respect to the first sentence?

MR. BOND: No, sir, I will be glad to. Well, yes, sir, I will move the first sentence be accepted by the Commission.

THE CHAIRMAN: I thought you wanted to change it.

MR. BOND: No.

MR. SCANLAN: I just hope the legislative history is clear on that. In the form of Mr. Case's

amendment. He mentioned it was more liberal than the Committee's language, and the hypothetical example that Dr. Bard gave may not be so hypothetical that the Legislature could pass a law restricting the procedure for petitioning under the language that the Committee has come up with whereas under Mr. Case's liberalized amendment, which was defeated, it would be more difficult to do that, since you have the right to petition any officer in effect of the Government; and on those grounds, I was for it, but it was defeated. I hope its defeat did not mean you didn't want the broadest possible right of petition written into the Constitution.

THE CHAIRMAN: I think the discussion is clear on that.

Now, Mr. Case, you want your motion to the second sentence?

MR. CASE: I would move that the second sentence read that, every person -- start it out, every person shall be allowed to speak, write and publish his sentiments on all subjects, being responsible for abuse of that privilege, paraphrasing Section 40 of the existing

Declaration of Rights.

THE CHAIRMAN: A second.

DR. BARD: I will second.

JUDGE ADKINS: Is the subject of Article 10 of the Declaration of Rights intended to be exempted from this provision, or is it otherwise covered in this or some other section of the Constitution?

PROFESSOR ASPER: We have suggested that Articles 10, 11 and 12 are more appropriate than any Article.

JUDGE ADKINS: I question whether Article 10 should not be in this Section in view of the fact you are dealing with freedom of the press and freedom of speech.

PROFESSOR ASPER: This is dealing with freedom of speech only in the Legislature.

MRS. BOTHE: We have an immunity provision in there.

THE CHAIRMAN: Did your question get answered, Judge Adkins?

JUDGE ADKINS: I assume the substance of Article 10 is otherwise divided in some other Section.

THE CHAIRMAN: This Committee has suggested

that the substance of Article 10 and the present Declaration of Rights be included in the Legislative Article.

JUDGE ADKINS: May I ask the Chairman of the Legislative Committee if the substance of Article 10 is recorded in his Report?

DR. BARD: It is.

MR. MILLER: Mr. Chairman, I gather from the conversations that I have heard that they want to take the word, citizen, out and say, individual. Is it the feeling of this Commission that some foreign agent that gets admitted to this country would have the immunities and be able to put out any sort of propaganda irrespective of his having any allegiance?

I can't see why we should change, citizen. That is my only point.

MR. HOFF: Our Declaration of Rights is not confined to citizens at the present time. You can go through this thing and you can find people of the State, or people, every man, the right of the people, good government, and better benefit of the community, you can find all kinds of laws in here that refer to the

individual, to the man, to the people, to the person. Most of the time it doesn't say, citizen. We are not changing that.

MR. MILLER: I am not arguing that. I want to know if it is the feeling of this Commission that any foreign agent that gets in here would have the right to do and say anything that no court or anybody else could suppress him? If that is the feeling, we know what we are voting on.

MR. CLAGETT: I don't think that was what they mean when they say, he shall be responsible for the abuse of that privilege. He can't get away from it, in other words, Congressman, because he is still going to be subject to abuse of that privilege.

MR. MILLER: I don't know in time of war and with this modern type of war where you have Fifth Columns and so, it seems to me, that we shouldn't invite people to come in and try to tear down our government; and I see no reason to say, anybody. Why can't we say, any citizen of the United States, or something like that?

MR. HOFF: Well, if you are going to differen-

tiate between whether a person is a citizen of the State of Maryland or a citizen of the United States or some other citizen, I think we are escaping what we want in our Constitution. We want to protect everybody, don't we?

MR. MILLER: I don't think so. I don't want to protect any enemy agent. I don't know whether you do.

THE CHAIRMAN: Did you finish, Mr. Hoff?

MR. HOFF: Not quite, but I can't conceive of the Constitution of the State of Maryland being drawn to protect only people who perhaps are citizens and brothers of the State of Maryland and not protecting somebody who may move here from New York who hasn't qualified as a registered voter or citizen or even from a foreign country. It seems to me that the language that the Committee has used here is overall that the freedom of the press and freedom of speech shall not be abridged, and we certainly have in here language that says that such rights can be abused.

I would gather that to mean the Legislature would have the right to determine whether and under

what circumstances the abuse of that privilege is consummated.

DR. JENKINS: We should not limit this to, citizen, because this is simply not a protection to the individual, protection of the people to have a right to know which may come from outside the area of citizens.

MR. MILLER: I am concerned, Doctor, with the situation where we may be confronted with it where an organized move comes in that isn't based on any citizenship right, but it might hamper the courts who say, You can't do this. Now, it is true they might stand responsible and be deported to Moscow or something, but I don't see why we should necessarily give everybody a right to do anything, no matter how irresponsible he is.

DR. JENKINS: That is what we ought to do.

MRS. BOTHE: It is not a question of the individual's right, but a question of what can be done within the State of Maryland, where everybody here has a right of free speech and free assembly whoever they happen to be, foreign dogs and cats, for that matter. It is not a question of where they came from. It is the

question they are here when they seek to exercise their rights.

THE CHAIRMAN: Dr. Michener?

DR. MICHENER: The comparable language in the First Amendment has not hamstrung Congress in regulating foreign agents.

MR. SCANLAN: The matter is before the public in a very dramatic form where the legislation proposed by the House UnAmerican Activities Committee where to do certain things for the Viet Cong would be a violation of the First Amendment.

As far as the Federal Government is concerned, I suppose you could have the same thing in a State level, but I think that last phrase, allowing for the improvement of grammar, each person remaining responsible for abuse of such rights would give the Legislature of the State of Maryland the power to make such laws, such acts, I would rest with what the Committee has proposed.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to delete the second sentence of Section 2 and substitute

in lieu thereof the following, Every person shall be allowed to speak, write and publish his sentiments on all subjects being responsible for the abuse of that privilege.

You ready for the question? All in favor of the substitution, signify by holding up their hands. Opposed. Motion carried, 11 to 7. Section 3.

MR. GENTRY: Section 3, which follows, No law shall be enacted respecting the establishment of religion. We want to take them up separately and see if there is any quarrel there.

THE CHAIRMAN: Any comment?

MR. HOFF: Out of curiosity, what does that do with the Vespery Act?

PROFESSOR ASPER: This replaces an awful lot of stuff, 37 and 39.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: 36, 37, and 39. In 37, where you have a religious test, it might be well to read Section 37 of the Constitution. No religious test ought ever to be required as a qualification for office or

proffer of trust other than a declaration in the belief in the existence of God, shall the Legislature describe any other office other than prescribed by this Constitution. There is a provision that looks very nice and sound, very nice, but it isn't any longer constitutional under the United States Constitution, and it would be ridiculous to attempt to preserve any such language or sentiments.

THE CHAIRMAN: Go ahead with the Section.

MR. GENTRY: Try the second line of Section 3, No person shall be restricted in the free exercise of religious profession and worship, nor shall any person be disqualified from holding public office or rendered incompetent as a witness or juror because of his opinion on matters of religious belief.

The feeling there is, it has now been held by the Supreme Court that in the cases cited inthe comment there on Page 7 of the Report, held in those cases that no such test as is called for in Article 37 is permissible, and we permit in Section 3, we permit or we prohibit a disqualification on either as a witness or juror because

of a person's religious beliefs. In fact, we can go further by the use of words on matters of religious beliefs, it takes in the atheists, the nonbeliever who might not have as such a religious belief, but he would have an opinion on matters.

THE CHAIRMAN: Any questions?

DR. BURDETTE: My question to the Committee goes to the point of whether the Committee did debate in the second sentence that the language, No person shall be restricted in the free exercise of religious profession and worship, may not in some circumstances, cover in some a person not of any religion at all. You can construe the Section 36 in saying, No person --

PROFESSOR ASPER: Section 36 says, It is the duty of every man to worship God.

DR. BURDETTE: But then a person can decide God is the table that he is sitting in front of. If you think this table is God, you are free to worship, see? Now, it says, nor shall, in the last line, unless on account of his religious persuasion or religious practice. What I am raising the question about, we see in

the newspapers now and then the freedom to worship in the National Constitution has been construed by some as not being an occurrence of people being free not to worship and I am saying that I would like to be clear that this is either freedom to worship or not worship. I am really asking the Committee as to whether or not the Committee thinks this means that a person is as free under this Constitution to be an atheist which I am not, but I think I am asking this question to be an atheist to have some kind of religious contention.

MR. GENTRY: I can't read anything in Lines 2 or 3 having suggested Section, No person shall be restricted in the free exercise. There is nothing there that says if you have no religion you are restricted and that is what you are implying. It wouldn't follow.

THE CHAIRMAN: Your answer to Professor Burdette's question, then, is, you do not see any such restriction as he is concerned about?

MR. GENTRY: No.

MR. CLAGETT: I have a different question, and that is referring to the language of the Section 3 as

recommended by the Committee, it says, No person shall be restricted in the free exercise, et cetera, and referring back to Article 36, there is a restriction which is not included here in the Committee recommendation, and it appears unless under the color of religion he shall disturb the good order, peace or safety of the State or infringe the laws of morality or injure others, et cetera.

I feel that there again, going back to Mr. Case's original objection, we have a means of incorporating a language which has something unique about it as well as a very, very beneficial restriction upon the free exercise of religious profession.

I don't know that everybody is entitled to be so free and easy in that exercise.

PROFESSOR ASPER: Just one comment. That language is not at all unique. The language just referred to by Mr. Clagett is not at all unique in the Maryland Constitution. Our thought was, it was unnecessary.

MR. CASE: Mr. Chairman, now with all due respect to Professor Asper, this language as I understand

it stems from the Act of Toleration which was, which we all know was one, was the first act ever passed in this country affording the citizens of a State the right to worship as they pleased. One of the things that this State, Professor Asper, is known for throughout the length and breadth of this nation is the passage of the Toleration Act.

Now, the framers of the Constitution used this language, and certainly it has been copied in a number of places, but the fact that it has been copied in a number of places and in a number of other States doesn't mean we should abandon it; and therefore, Mr. Chairman, I move that, and I will restrict this motion to the first clause of Section 3, no person shall be restricted in the free exercise of religious profession and worship.

THE CHAIRMAN: The first clause of the second sentence.

MR. CASE: Of the second sentence, that that be deleted and that the great language of the Act of Toleration which is employed in Article 36 be modified and that there be enacted in lieu of that, the following:

Every man shall have the right to worship God in such manner as he thinks most acceptable to him, and all persons are equally entitled to the protection of their religious liberties wherefore no person shall by any law be molested in his person or estate on account of his religious persuasion or profession or for his religious practice.

That is my motion to substitute those great words.

THE CHAIRMAN: A second.

MR. CASE: And I again say for the sterile language which has been used here which admittedly means the same thing, may even say it better, but it hasn't said it as long.

MR. SCANLAN: Happy for your last comment.

THE CHAIRMAN: Any second?

MRS. BOTHE: I am a little concerned. I may be off Mr. Case's motion slightly, but I believe Mr. Asper commented that it was unnecessary to put this prohibition on the uninhibited use of religion. The United States Constitution merely says that Congress makes no law

respecting the establishment of religion such as the first phrase of this proposed Section 3, but our proposed language here that no person shall be restricted, et cetera, I feel might possibly enable. I know I personally have been mixed up with some cases in Black Muslims in the Penetentiary who want to disrupt the whole administration of the discipline there, and I am not at all sure after doing some research into the applicable law that under this proposed language which goes further than the Federal Constitution wouldn't put those people in a position to continue.

I don't think anybody wants them to have the Constitution to do it.

PROFESSOR ASPER: You are obviously better informed than I am. You have been doing research on the point. Under the ordinary police powers of the State, power to prevent abuse of practices, disruptive practices, even at --

MRS. BOTHE: This says, No person shall be restricted in the free exercise of religious profession and worship -- period. That goes further than the Federal

Constitution.

PROFESSOR ASPER: That is true.

MRS. BOTHE: As far as I know from my researches which I had occasion to do in a particular circumstance, I think possibly this language would be at -- for instance, Black Muslims would have to be permitted to proceed with their beliefs even though incarcerated under the Maryland penal system.

PROFESSOR ASPER: May I get something clear? I don't think Mr. Case's motion goes that far.

THE CHAIRMAN: No, Mr. Case's motion deleted the first clause and substituted other language.

Mr. Gentry?

MR. GENTRY: Going now to Mr. Case, at the risk of being blasphemous to the memory of our great forefathers who passed the Toleration Act, I might remind him a study of history will show that in the original, in the origination of Maryland, we had a provision for religious freedom, and it said in so many words, every person is free to practice the religion of his choice except that any person who doesn't believe in the Blessed Trinity is

subject to the death penalty. Now, that is the kind of thing which we are running the risk of adopting by error or whatnot when we just fall back on this traditional language that wasn't written in the same times in which we exist today.

MR. CASE: You seriously think that somebody could be subject to the death penalty by the inclusion of the language that I suggested?

MR. GENTRY: No, no; you were talking about the great Toleration Act, and I am talking about what they had originally in law, in Maryland as I have just expressed it.

MR. BOND: I would like Mr. Case, to ask if you will accept an amendment to his motion carrying out the point first raised by Mr. Clagett and raised by Mrs. Bothe still using the language of the old Declaration of Rights following Mr. Case's clause, unless under the color of religion he shall disturb the peace or good order of the State or infringe the laws of morality or injure others in their natural civil or religious rights.

MR. CASE: Mr. Chairman, I think what I am trying

to do here and again let me reiterate, not change in effect the substance of what the Committee has tried to do, but I am trying to use wherever possible the great language of the past. Now, I think the suggestion I have made meets that point. Now, the suggestion which Mr. Bond has made was going to be my next one, but I think it is the second thing to vote on.

THE CHAIRMAN: You don't accept the amendment.

JUDGE ADKINS: Mr. Case's proposed language, he refers to Line 2 of Article 36. I have forgotten exactly what the first line, how he worded the first line, the second line reads, It is the duty of every man to worship God in such manner as he thinks most acceptable to him. That is the language he cited.

MR. CASE: No, no; you are wrong there.

JUDGE ADKINS: How does it read?

MR. CASE: I take the first business about the duty out and start it from, Man shall have the right to worship God in such manner as he thinks most acceptable to him.

JUDGE ADKINS: That is right, my question is

the, him. I assume he uses a little "h" for him, to mean the man rather than the God. The way this reads, it means, acceptable to God, and I assume that is not what Mr. Case meant.

MR. CASE: Not at all. The word, him, means the God that you wish to worship, and if you want to worship an idol, then you worship that idol the way he, the idol, the way you think he wants you to worship him. If you don't want to worship anybody, that is up to you.

JUDGE ADKINS: If you preserve this langauge with the capital H, then it is an inarticulate major premise that there is a God which some people may not acknowledge. If you capitalize the H, you are writing a constitutional provision that there is a God. I like the language, and I would be susceptible to the language if it is a small "h".

MR. CASE: If the Committee feels that is what they want to do, I have no objection to it because I am not deeply theoretical on this particular point. I am just trying to preserve the principle of the language.

MRS. BOTHE: In the event Mr. Case's amendment

is defeated and I would propose and like to see the vote on this basis that Section 3 be the first sentence of the proposed Section 3, and the second part be struck.

MR. SCANLAN: How does that go?

THE CHAIRMAN: I am not following you at all.

MRS. BOTHE: That the Maryland Declaration of Rights only contain the provision analogous to the Federal provision that no law shall be enacted respecting the establishment of religion and the balance of the proposal as well as what Mr. Case proposes not be in the new Constitution.

I would like to comment briefly. We have had so much recent litigation on the question of Church and State, most of it arising from this issue of whether you are required to worship God or a belief in God at all, that I think it is folly for a new State Constitution to contain provisions which will leave open the positive Schowgurow case arising in Maryland again. I think the law should simply require the Legislature to be restricted by what has become the Federal constitutional concept, and the new Constitution ought to leave all the religious

exhortations out, that it ought to be a civil constitution and leave God to the religious authorities and the people.

MR. CLAGETT: Schowgurow does not go to the freedom of the individual. It goes only to the establishment by the --

MRS. BOTHE: Schowgurow -- actually, Article 36 was an attempt to liberalize, to make it possible for anybody to serve as a juror as long as he believed in some God, and this is the basis on which the whole jury system of Maryland was struck down, and it was our forefathers who gave religious freedom and liberality, and I think we are looking for trouble when in the Constitution in any way or inference we exhort people to believe in God, whatever God it might be or whether it is the table. It is inappropriate, and I think the Legislature should be restricted as it is federally and as it is under the State Constitution from enacting any laws abridging freedom of religion or doing any affirmative or negative act which restricts people in their religious belief; and that is as far as it ought to go. All this godliness which was present in 1867/that has caused so many dissensions should be

kept out of the new Constitution.

MRS. FREEDLANDER: Just for the sake of accuracy, she said the act of free exercise is not a free idea. The Federal Constitution prohibits. It is --

MR. SCANLAN: Prohibits restraints.

MRS. BOTHE: Prohibits Congress from making any law. That should be in the Maryland Constitution, but we should not go beyond it to all the language as to how you worship God or it is okay if you worship God, any God, but please worship one.

PROFESSOR ASPER: We don't say anything like that in Section 3.

MRS. BOTHE: The corollary to that is the dangers I see in the Section 3 proposed that people should not be restricted in the free exercise.

MR. SCANLAN: That is what the Federal Constitution says.

THE CHAIRMAN: Let Mrs. Bothe finish.

MRS. BOTHE: My opinion is to have a very simple provision that the General Assembly shall pass no law, the Government shall enact no laws restricting freedom of

religion -- period, and then everybody in the population go their own way with it without any of this flowery language encouraging or discouraging or in any way circumscribing religious beliefs and practices.

PROFESSOR ASPER: There are two things there. I think I tried to indicate,in the comment here I am talking about two things or at least in Maryland you are talking about two things in the last two years anyway. You talked about, first of all, the establishment of religious restrictions of the free exercise of religion on which, in essence, was involved in Schowgurow. Now, we have for the first part of that the basic principle of separation of Church and State, affirmative aid has been pointed up most dramatically. We simply adopted the established clause. It isn't pretty. It could be said better, but this is the language of the Federal Constitution now as incorporated over the years.

I am inclined to agree with you personally that perhaps the balance of this isn't necessary at all, but I think for purposes of the Maryland Constitution, in light of the recent history, this time an affirmative statement

merely is conformative, if nothing else, and seems advisible.

MR. SCANLAN: I couldn't figure out whether Mrs. Bothe was arguing against the Case amendment or against the Committee version.

THE CHAIRMAN: Against both.

MR. SCANLAN: As far as the Case amendment is concerned, I share her opposition, but Professor Asper is right, basically the first two clauses, the first sentence and the first clause of the second sentence are basically what is in the First Amendment of the Constitution, No law shall be enacted establishing religion -- well, they don't change it much, shall be restricted in the free exercise of religious profession and worship. If you just have an establishment clause, you still have the problem of interference with free exercise. Suppose Maryland like West Virginia, passed a law requiring all students to salute the flag and Joe Hoffa's witnesses don't like to salute the flag and went to the Supreme Court of the United States twice and suppose it came up under the State Constitution, and that would be a restriction in my view on the free exercise of their religion.

No matter how you draft the language, you are going to have the problems of the snake charmers and Black Muslims. We have had the same problem on the Federal level under the First Amendment. No matter what language you draft, it is always going to be this question, whether this is truly free exercise of religious belief or whether the State in its power can prohibit, just as we can adopt, as in Black's words, the First Amendment is mandatory, are there going to be the cases where people can't wrap snakes around themselves and disrupt the prisons in the name of religious freedom. These problems we are always going to have with us. The Commission has established the problem, and I support their language.

THE CHAIRMAN: Any further comment?

MRS. BOTHE: I would like to make one comment on what Professor Asper said about the necessity of putting the second part of Section 3 in because of the recent decisions.

Right now, the jury trial decision in Schowgurow is very fresh, the Horace Mann case is very fresh, but this Constitution is supposed to last a long time, and I

think this is a concession to 1966. I am sure by 1980 it is not going to be at all necessary to think in terms of jurors being disqualified because they refuse to declare their belief in God. I am impressed with the second Section as being something that arose at the moment rather than a statement for the ages.

PROFESSOR ASPER: I feel this, I am a little conscious about it, but I am not sure the entire second sentence falls in there. One is establishment, the other is restriction on free exercise.

MRS. BOTHE: Couldn't we just add, exercise?

THE CHAIRMAN: We have a motion. Let's stick to that first.

MR. CLAGETT: It may not be until 1986 that we get around to interpreting what the word, witnesses, in this phrase means. We haven't actually decided that question yet, what kind of oath shall be administered. It says, juror or witnesses, but we haven't decided what we mean, what witnesses means yet.

THE CHAIRMAN: Mr. Case?

MR. CASE: Let me again reemphasize that that

clause doesn't go to my motion.

Mr. Chairman, after having heard the discussion, I would certainly be amenable to an amendment, and I would like to amend my motion so that the language would be as follows, attempting as I am to preserve as much of the venerable language as is possible consistent with the modern concepts of law in this area.

I would suggest two sentences in place of the clause, which would be as follows: Every man shall have the right to worship or not to worship in any manner that he thinks most acceptable. All persons shall be equally entitled to protection of their religious liberties, semicolon, wherefore no person shall by any law be molested in his person or estate, et cetera, as it goes down to the end of the language.

THE CHAIRMAN: Would you give us the first sentence again?

MR. CASE: Every man shall have the right to worship or not to worship in any manner that he thinks most acceptable. That will take out the, him, if that is a stumbling block, but I think that that language would

at least preserve the words that have come down as meaningful words since 1776.

THE CHAIRMAN: You purposely omitted the word, God, in the first sentence?

MR. CASE: Yes.

THE CHAIRMAN: All right, you ready for the question? Mr. Gentry?

MR. GENTRY: Unless under the color. You don't run into that.

MR. CASE: No.

DR. BARD: May I ask Mr. Case a question? Why do you object to going down to rights, such as Mr. Clagett suggested?

MR. CASE: I think it is another thought here, that is the reason. It deals with the different concept. I think that concept ought to be debated separately and apart from what we are talking about here. What I am again trying to do is only preserve the language.

DR. BARD: It seems to me you are somewhat contradictory because this is within the language.

MR. CASE: It is, but it is another idea; and

it is an idea the Committee doesn't even have in its draft. It is a fine idea, and I like the idea, but I think it ought to come up next.

MR. GENTRY: Earlier we were handed these memos by Mr. Brooks which might have to be reprinted. It says, We need a new Constitution, it is out of date, too long and too detailed. It should be concise, should be confined to fundamentals suited for today's society.

THE CHAIRMAN: Any further discussion? You ready for the question? The question arises on Mr. Case's motion to delete the first clause in the second sentence of Section 3, reading, No person shall be restricted in the free exercise of religious profession and worship, and substituting in lieu thereof two sentences, Every man shall have the right to worship or not to worship in the manner he thinks most acceptable. Every person shall be equally entitled to protection in his religious liberty, semicolon, wherefore no person shall by any law be molested in his person or estate on account of his religious persuasion or profession or for his religious practice.

DR. MICHENER: Don't you need some phrase, or lack

thereof, if you want to be consistent with the rest of them?

MR. CASE: I will accept that, or lack thereof.

THE CHAIRMAN: Where is this?

MR. CASE: At the end.

THE CHAIRMAN: After the words, or for his religious practice, or the lack thereof.

You ready for the question. You understand the motion now. All those in favor, signify by raising hands.

Motion is carried, 9 to 8. Now, I take it that the Committee would be instructed in light of that decision to rephrase the beginning of the remainder of that clause. It is a new sentence, the part beginning, No person shall be disqualified, and so forth.

MR. GENTRY: We are keeping that, the last three lines.

MR. SAYRE: Nor shall any person be disqualified. Would it hurt the great language when we refer to, man, to refer to, person?

MR. CASE: Man has been here for quite a while.

MR. SAYRE: I probably realize there was no legal problem in interpreting that.

THE CHAIRMAN: Is there any further question about Section 3? Mr. Bond?

MR. BOND: I renew my motion made as a result of a comment from Mr. Clagett that we pick up the rest of the language in old Article 36, beginning with the word, unless, and ending with the word, rights, and the reason for that is that --

THE CHAIRMAN: I think the motion ought to be more definite for the record than that. You better read it.

MR. BOND: That the words, unless under the color of religion he shall disturb the good order, peace or safety of the State or shall infringe the laws -- I will strike that, the State or injure others in their natural civil or religious rights.

MR. CLAGETT: Let it read consistent with the amendment we just voted upon, and no man -- let it read, No man under the color of religion shall disturb the good order, peace or safety of the State or shall infringe.

MR. BOND: Laws, morality or injure. I am going to leave out the words, shall infringe the laws or morality.

THE CHAIRMAN: Restate your motion so we have it in the record.

MR. BOND: No person shall, under the color of religion, disturb the good order, peace or safety of the State or injure others in their natural civil or religious rights.

THE CHAIRMAN: Any second?

MR. CASE: Second.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: There are a lot of problems with, natural, civil and religious rights, particularly, natural and civil. I don't know what they are. I find we are leaving the doors open to wide speculation as to what they might be, and I am not so sure that -- well, that is enough. I think those words are too vague.

MR. CLAGETT: Mr. Chairman, wouldn't you interpret, civil, to mean, right of property, rights of contract, rights of any person, personal rights, and rights would

mean the same thing, and if we have any question about the word, natural, strike the word, natural, and use, civil rights.

MR. GENTRY: Civil rights in Federal law means something else, and we want them to mean civil rights under the Federal law, or civil rights when we think of property rights.

JUDGE ADKINS: It would seem to me that the answer to Mr. Gentry's question is this language has been in this Constitution for close to 200 years that there shouldn't be very much question as to what the language means if it means anything.

Questions relating to the meaning of the language should have been clarified by this time.

MR. GENTRY: It is true we have had this language in Azerow and Schowgurow which the Supreme Court said was bad language.

THE CHAIRMAN: Mr. Hoff?

MR. HOFF: I have been voting against these amendments to the Committee's Report and will continue to do so because it seems to me that the whole thought of

the people who framed this particular section relied entirely upon this final provision, provided he believes in the existence of God, and so forth, and so forth. I think the whole reason for this language that we are now trying to go back to is completely lost because we can't put in here, provided that he believes in the existence of God, and I think that is the crux of this whole Article 36, and it is an anachronism to say we shall retain the old language that is so closely associated with the provision that you must believe in God in a new Constitution.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, in the interest of not having too many words and we are supposed to do this in as short a space as possible rather than argue civil and natural, why can't we just say rights, and let it go at that?

THE CHAIRMAN: Will you accept the amendment, Mr. Bond.

MR. BOND: You are deleting the words, natural, civil, or religious?

MR. MILLER: That is right.

MR. BOND: That will be all right.

THE CHAIRMAN: You accept it?

MR. BOND: Yes.

MR. CASE: I accept it.

MRS. BOTHE: I just want to emphasize what Mr. Hoff said was a very sensible statement, that we adopted the first half of this language, and if we are going to use it, I think the second half has to come in, too. I wish we could take a second look at it, though. As Mr. Hoff said, this whole thing is based on the last sentence which we cannot put in the new Constitution whether we want it or not. We are going to have to get rid of this language and to use as much of the remaining stuff as we can. Just because it has been there all those years, it is just a lot of surplus in the Constitution, and I think we have to consider whether we can have the Report of Section 36 any longer; and if we can't, we might as well write new language.

THE CHAIRMAN: Professor Burdette?

DR. BURDETTE: I have certainly voted as I have

in favor of these amendments with no thought at all of inserting any language or even wanting to insert any language that a person must believe in the existence of some kind of God, but rather my motivation has been, I thought it highly likely that in the course of another 100 years that there will be movements in the social order which will attempt to use existing language in whatever Constitution there is to provide that people must have some kind of religious expression.

I think this language would make it clear that they not necessarily have to have any one kind, but I would like to prevent legislatures from attaching to the statutes language which would seem to make the people have some kind of a form of religion.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: Dr. Burdette has pretty well said what I was going to say.

THE CHAIRMAN: Dr. Michener?

DR. MICHENER: Unless he shall disturb the peace and good order of the State. As a Quaker, this type of language is not the same as used in England to suppress the

Quakers where a meeting was held to be against the peace and good order and safety of England where all they were going to do was meet. In more recent times, Quaker meetings support their members who choose to go to prison rather than obey the draft laws. Again, you might be taking action against the good order of the State depending on how you ask.

MR. SCANLAN: As part of the expression, I want to say Amen.

THE CHAIRMAN: Dr. Jenkins?

DR. JENKINS: I want to say Amen twice. These limitations provide the crack for withdrawal of religious liberty. As you say, you may have a Baptist preacher who preaches above the normal level and say, Well, you are disturbing the peace. I really prefer, I am sorry it is lost, the original statement of the Committee, but I don't think we should insert this further prohibition. We should leave this to the courts in each individual instance where someone alleges a violation.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to

add a sentence after the two sentences just added to Section 3, reading, No person under the color of religion shall disturb the good order, peace or safety of the State or injure others in their rights. Ready for the question? All those in favor, signify by a show of hands. Contrary. The motion has lost 7 to 11. Any further comment on Section 3?

MRS. BOTHE: Point of clarification -- where does this leave us now with this Section?

THE CHAIRMAN: Section 3?

MRS. BOTHE: Yes.

THE CHAIRMAN: The first clause of the second sentence is deleted, and in place of that you have substituted two sentences, Every man shall have the right to worship or not to worship in the manner he thinks most acceptable. Every person shall be equally entitled to protection in his religious liberty wherefore no person shall, by any law, be molested in his person or estate on account of his religious persuasion or profession or because of his religious practice or the lack thereof.

Any further question on this?

MRS. BOTHE: Is it then necessary to keep the first sentence in?

MR. CASE: Certainly. Then, Mr. Chairman, the last clause of the second sentence should start off, No person shall be --

THE CHAIRMAN: This is picked up after your last motion. Any further discussion? If not, we will suspend on consideration of the Declaration and resume with Section 4 tomorrow and proceed with discussion of the Fifth Report of the Committee on Legislative Department.

Dr. Bard?

DR. BARD: Okay. As far as Section 1 is concerned, I suspect there won't be any discussion on that, and the same would apply in reference to Section 2. This is the Fifth Report, dated August 5, 1966.

THE CHAIRMAN: Fifth Report of the Committee on Legislative Department.

DR. BARD: You may have two. I don't think there will be any question, Mr. Chairman, concerning Sections 1 or 2. These are perfunctory things in the main. As for Section 3, it is now worded in conformance with

recommendations made at the meeting. However, our Committee was unanimous in asking that we be given the privilege of repeating the recommendation which we made previous to the Easton vote, and that is in connection with setting up an actual ratio.

You remember; we would insert then in Section 3 in place of, Each district shall consist of compact and contiguous territory in the ratio of number of legislators in each district to the population of such district shall be as nearly equal as practicable. We would insert, The ratio of the number of senators in each senatorial district to the population of such district shall be such that the largest ratio shall not exceed the smallest by more than 10 per cent.

The ratio of number of delegates in each House district, and I am reading this from the Fourth Report, to the population of such district shall be such that the largest ratio shall not exceed the smallest by more than 10 per cent. We emphasize the fact that we believe this point is so important that we hope that the Committee will reconsider its view as noted at Easton when it felt

that no particular percentage ought to be indicated here because there has not been a definitive answer by the courts. Our feeling is that the State of Maryland can take leadership in regard to setting forth what it feels is a proper ratio.

THE CHAIRMAN: This is one of the matters that was fully debated at the last meeting and was --

DR. BARD: That is correct, and we lost.

THE CHAIRMAN: And it was, the Committee's recommendation was rejected but because it is the request of the Committee, it will be submitted again for debate and discussion. I ask you only to be brief. The position taken by the Committee is that they would like to modify the last sentence so as to provide that the deviation in the ratio of the number of senators to senatorial districts and the number of delegates to House districts should not vary more than 10 per cent.

DR. BARD: 10 per cent in the spread, 5 per cent from?

THE CHAIRMAN: 5 per cent on either side.

DR. BARD: Either side of the spread.

JUDGE ADKINS: I would like to congratulate the Committee on persistence. This is the third time this matter has now been brought to this Commission. The Committee has lost on two previous occasions. They are now asking for reconsideration a third time. It does seem to me the matter ought to be put to rest.

DR. BARD: We won the first time.

JUDGE ADKINS: That is not my recollection. You reported it the first time. You brought back a recommendation a second time, and you were defeated, and I understood at the last meeting you threw in the sponge and here you are again. I am not going to argue the point because it has been thoroughly debated, but at some point the Commission majority ought to prevail.

DR. BARD: Our point is where we have complete unanimity as we do on this matter, where our Committee itself is divided, we feel we ought to let it rest. We believe this is a substantive issue and that is why we bring it up here.

THE CHAIRMAN: To save time, you want to restate your opposition?

JUDGE ADKINS: My opposition is that you are without complete debate before this Commission. You are without complete debate on the proposition automatically foreclosing by your own statement the right of certain areas of the State to have representation from their areas after the 1970 census. I do not think that ought to be written into the Constitution unless we take the time to thoroughly debate that problem. We have not done so. The Committee apparently has not given certainly a great amount of attention to that problem because there is little or nothing contained in their Report in relation to the merits or demerits of the proposition; and I do not think it is fair to arbitrarily establish a figure without a thorough consideration of that problem.

Now, that is the same argument that I made before. The matter has been presented and debated twice. I am not going to push it any further except to say I hope the Commission will sustain its previous two votes.

THE CHAIRMAN: Any further discussion?

MR. SCANLAN: All I want to say is that consistence is a virtue the Eastern Shore has taught us. I

don't want to restate all the arguments on the other side, either. Basically, we thought it good to provide a standard certain not only for the Judiciary but for the Legislature itself when it begins to tackle the difficult tasks.

I think you could argue whether it should be 5 or 10, but whatever the percentage, it seems to us that a standard certain would solve a lot of problems in the future. The Chairman has moved for reconsideration, and I second the motion for reconsideration.

THE CHAIRMAN: Professor Burdette?

DR. BURDETTE: I am confused, and I don't know whether anyone else is or not as to what language is proposed or where.

THE CHAIRMAN: In place of the last sentence of Section 3 on Page 2.

MR. CLAGETT: It is on Page 3 of the Fourth Report.

THE CHAIRMAN: Delete the last sentence of Section 3 and in place of that, Dr. Bard will you read the language you suggested be substituted?

DR. BARD: Ratio of number of senators in each senatorial district with the population of such district shall be such that the largest ratio shall not exceed the smallest by more than 10 per cent.

The ratio of the number of delegates in each House district for the population of such district shall be such that the largest ratio shall not exceed the smallest by more than 10 per cent.

DR. BURDETTE: I think it is most unfortunate that we don't have the language, but it does appear in the Fourth Report.

THE CHAIRMAN: Yes.

DR. BARD: Page 3 of the Fourth Report.

DR. BURDETTE: I did want to emphasize what I got from your comment, that this would mean that when you get an average size district that you really wouldn't have a deviation upwards or downwards by more than 5 per cent.

DR. BARD: Right.

DR. BURDETTE: I don't recall the percentages approved by the Court of Appeals in the present one, but

they are far more and they are in terms of, you recall. Some of you who were in this legation can do it more effectively than I, and it is too bad we don't have that decision of the Court of Appeals where there are tables which indicate quite some disparity, and there is also taken into account by the Court of Appeals the view that the picture of the two houses should be taken into account at the present time.

Now, one may not think well of this Court of Appeals decision. Actually, I believe it is something around 20 per cent deviation from the normal in a sense. We have one or two more cases far more. The point I am trying to make here instead of allowing some flexibility we allow almost none. We fight preclude coming close. I don't know what the difference is in Harford County. It is a little. We have been able to allow Harford County to have a senator with some disparity. Do you know whether that is within a 5 per cent deviation from the normal. That is what this language means, isn't it? 5 per cent deviation from the normal?

DR. BARD: Yes.

DR. BURDETTE: Which is very much more than the present guidelines we have from the Supreme Court.

THE CHAIRMAN: More restrictive, you mean.

DR. BURDETTE: Yes. We don't have any real guidelines but there have been a great deal of call of 15 per cent.

DR. WINSLOW: That is a 15 per cent spread?

DR. BURDETTE: I realize it is not a clear ruling.

MR. MINDEL: As a member of the Committee, what concerned us was the fact that if this restriction is not placed in the Constitution that the House of Delegates in future years could expand to a very large number. We took the number, for example, of 200. That comment did not appear in the Fourth Report, and we discussed it at our recent meeting, we thought it would get out of hand and one of the purposes was to keep the House of Delegates and the Senate down to a reasonable number, and we ought to take that into consideration.

THE CHAIRMAN: Mr. Brooks?

MR. BROOKS: I want to make two comments, one

that the language actually used in the Fourth Report really doesn't convey the idea successfully, I am afraid, that under the comment on Page 3 of the Fifth Report, that is the comment under Section 3 that language ultimately if adopted would have to be rephrased, but the idea of the Committee is first that the various legislative districts because of necessity might not be single-member districts. If a county is to be assured of one legislator in the House, for instance, compared to Baltimore City as the other extent unless you have a common denominator of single-member districts, then the problem is not whether the districts will approximate each other numerically in size, but whether the ratio of each representative per population represented approximates anything the same. Now, with this in mind, it means you might have one district with six House delegates and another with one with a deviation of ratio of 10 per cent from the total ratio of the total number of delegates in the House to the total State population. This would mean that each delegate might have a representative deviation if this language were adopted, a 5 per cent higher or lower, and

one other thing should be kept in mind, and that is where you have a multi-representative district, the actual numerical variation will be multiplied by the number of delegates you have.

So it is possible to have quite a large numerical deviation even under this proposal, that your single-member district would have a single deviation perhaps of 10 per cent above and below the ratio for the State; but in a multi-district, you could have that for each representative, say, if it is five members in the district, multiply that by five on a numerical basis, and you get some idea of the number of persons deviation of the district on a proportional basis.

DR. BURDETTE: I don't follow you on that. If you multiply the number of delegates by five, you also have to multiply the ratio by five and come out with the same thing.

MR. BROOKS: The point, then, is, you come out with the same thing as far as the numerical variation of persons in the district. The variation would be much more sizeable. The ratio is still the same.

MR. MILLER: I might say, Mr. Chairman, as a member of the Committee, that the Committee wasn't unanimous necessarily on whether it should be 5 per cent, 10 per cent or 3 per cent, but our feeling was that there ought to be some guideline.

MR. BURDETTE: What about a fraction?

DR. BARD: Not a guideline.

MRS. BOTHE: My reasoning in voting for, with the majority of the Commission last time was based partly on the notion that no matter what per cent we pulled out of the air, we were simply challenging the powers and the courts that be and guessing the future that if we put in a percentage which was too low, we might be hamstrung, and if it was too high, it would be unconstitutional and would serve no real purpose unless we had some certainty. Reapportionment has been dictated by the courts much more than constitutions or laws, and I think that is a fact of life we are going to have to live with as far as whether a 5 per cent deviation is enough or a 10 or 20, why put it in the Constitution? It is only there to be challenged and perhaps found

unconstitutional under other standards.

DR. BARD: The only reason the courts have been dictating it in this area is because the Constitution has not made the necessary provision. This is our very point.

THE CHAIRMAN: Any further comment?

MR. BOND: Mr. Chairman, I might state that I am from a more populous area. I have bone back and re-read the Sections of the Third Report of the Legislative Department, and the Second, and I see they vary as to their percentages and I think there is a lot of good in what Judge Adkins said, that we should not get into the matter of how certain portions of the State should be represented in the Legislature and the arguments that have been put forth in this and the previous Report are not enough to convince me to change my vote.

THE CHAIRMAN: Any further comment? Dr. Bard, in view of Mr. Miller's statement a moment ago, could you indicate for the benefit of the Commission what the views were of the Committee as to the percentage? I am not sure I understood him, but I thought he said you were

not unanimous on the 5 per cent deviation from the normal.

MR. MILLER: I merely meant by that, sir, that we didn't debate the percentage in the request for reconsideration. We were unanimous that we thought there ought to be a guideline and frankly, I wouldn't care whether it was 10 or higher. I feel it ought to be somewhat flexible whereas some of our members, I think, thought it ought to be only 3. But the principle that we like and considered first is whether or not there should be a guideline and then the percentage could be debated or discussed more.

MR. SCANLAN: Could I amend the motion for reconsideration by deleting the figure 5 and substituting blank per cent? After all, when the Convention gets the work of this Commission, it will be a year or so hence, and by that time, maybe some of these guidelines will be filled in by court decisions if that is the Commission's preference.

So I would move to amend the consideration to leave the percentage blank.

DR. BARD: I will accept that. The Committee

will accept that. We will talk about it.

THE CHAIRMAN: Dr. Bard, I have another question. Do you have a comment with respect to Mr. Brooks' point?

DR. BARD: No. The three of us were following Mr. Brooks in this connection, and his arithmetic seemed reasonable, but we think we would have to see it in writing almost exactly as he stated it.

THE CHAIRMAN: Well, apart from the arithmetic, his point, as I told him, was that the formula you used would not produce the result that you seek in multi-member districts.

DR. BARD: But it could if we decided upon a formula, and this was the point which Mr. Brooks was making.

MR. BROOKS: I am suggesting that the concept be voted on, but not the language.

DR. BARD: This meets with our approval.

THE CHAIRMAN: Is there any further discussion?

MR. HOFF: It seems to me the deletion of the percentage indicates the weakness of the whole

proposition of having any percentage at all. If you are deleting because between now and a year from now the courts might say one thing, how do we know that the following year or five years or ten years that the courts may not change their minds and say something else? I agree that we are hamstringing ourselves by putting any percentage in here. I think that the word, reasonable, is all that we can possibly hope for.

THE CHAIRMAN: Any further comment?

DR. BARD: We don't say, reasonable. We say, practical.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: That is more reasonable.

THE CHAIRMAN: All right, then the motion is to delete the last sentence of Section 3 and substitute therefor, the principle embodied in the corresponding language of Section 3 as submitted in the Committee's Fourth Report.

I want to make just one comment. I am a little troubled in view of Judge Adkins' statement about this being the third time this matter has been discussed and

discussed fully by the fact that there are only 18 members of the Commission present today as contrasted with 25 the last time, so that it is possible that if the numbers happen to work out that way, you get a contrary result without really having changed the opinions of any of the members. I really don't know what to do about it except to call it to your attention, except to observe that unless you feel very strongly about it, a 3 to 2 action by 25 out of 26-man Commission ought to be seriously considered.

You ready for the question? All those in favor of the motion, signify by a show of hands.

THE CHAIRMAN: Motion is lost 6 to 12.

Section 4.

DR. JENKINS: Where does this leave us with Section 3?

THE CHAIRMAN: As it appears in the fifth draft.

DR. BARD: Section 4 now reads as adopted at the Easton meeting. There is a slight change as far as the language is concerned, but I think that is too little

to make any comment.

THE CHAIRMAN: Any question; any comment?

Section 5.

DR. BARD: Section 5 embodies in the main what was agreed upon at Easton, and I would like to read it and then we will have an addendum to it.

Within three months after official publication of the population figures of each decennial census of the United States, the Governor shall present a plan of redistricting to the General Assembly. If the General Assembly is not in session at the time of the presentation of such plan, the Governor shall convene the General Assembly in special session. The General Assembly shall redistrict the State by enacting such plan as presented or as amended by it, or the General Assembly shall enact its own plan of redistricting. If, three months prior to the final date for the filing of candidates for the next Statewide election occurring after publication of such census figures, a plan of redistricting has not been enacted into law, or if so enacted, is not then valid law, the plan of redistricting as presented to the General

Assembly by the Govemor shall then become law.

We have an addendum we would like to add. However, I think it would be well if we vote on this part first.

MRS. FREEDLANDER: Could we substitute the word, reapportionment, instead of, redistricting?

DR. BARD: That is a good change.

THE CHAIRMAN: I am not so sure you can make the change quite that simply. You are not going to reapportion.

DR. BARD: Reapportion and redistrict.

MR. SAYRE: That is why I think you have to have the reapportionment and possible redistricting.

MR. SCANLAN: I am confused about that. The way I understand the terms and why I agree with Mrs. Freelander, reapportionment usually refers to changing the representation in the State Legislature whereas redistricting has usually been construed to mean changes in the congressional districts of a State, but I concede the words have been used interchangeably, and redistricting sometimes has been used generically to cover both, and

reapportionment has been used generically to cover both; but it would be more accurate to use the phrase, reapportioning, whenever referring to changes in the legislative districts in the General Assembly. This came up earlier.

THE CHAIRMAN: Earlier, and we adopted the phrase, legislative reapportionment.

MR. SAYRE: To clarify my own thinking, if we change from three to five members in a new district, does this term, legislative reapportionment, accomplish that?

THE CHAIRMAN: Did you follow his question?

DR. BARD: I follow him, but that is why I feel it is both redistricting and reapportionment. For example, let's take a particular county that might need to redistrict in order to take care of the rule concerning the fact that it cannot have more than six members in the House of Delegates, so it really is a combination at times of both redistricting and reapportioning.

MR. SAYRE: I don't see how you can get out of the word, redistrict, here in that it is State Legislature.

THE CHAIRMAN: You could use the word, legis-

lature, to avoid talking about a congressional district.

DR. BARD: Right; that would do it.

THE CHAIRMAN: Would your phrase on the first line on Page 4 be, a plan of legislative proportionment or redistricting?

DR. BARD: Right; reapportionment.

THE CHAIRMAN: What other changes would you make?

MR. SAYRE: And legislative.

DR. BARD: Legislative. Well, you would have to say, reapportion and redistrict.

THE CHAIRMAN: Your second sentence, Dr. Bard.

DR. BARD: I want to think this over for a minute. The General Assembly shall redistrict the State. That is all right. You don't reapportion the State. You could say, and reapportion the Legislature. I guess you could say that.

MR. SAYRE: This Article deals only with the General Assembly in any event.

THE CHAIRMAN: Rather than take the time to concern ourselves with the language, can we say here that

we will be considering this Section as recommitted to the Committee to adopt appropriate language to make it clear that we are talking about legislative reapportionment or legislative redistricting?

DR. BARD: Yes, I think so. I do think Dr. Winslow might want to add to that.

DR. WINSLOW: It is both.

DR. BARD: That is the way we feel. Is there any further question?

DR. JENKINS: You say three months after official publication. Is the official publication date clearly definable? Census volumes come out over a period of two or three years. But is this one clearly definable?

THE CHAIRMAN: You mean, is it one date, in other words?

DR. JENKINS: Everybody knows three months after this date.

MR. BROOKS: You mean, is the date a known date?

DR. JENKINS: Yes.

MR. BROOKS: No.

DR. BARD: Is he referring to the final date?

DR. JENKINS: You said within three months after official publication.

DR. BARD: It isn't a date in the calendar, but it is a definable date. Yes, it is a definable date.

DR. JENKINS: The census comes out in a number of different volumes, and this would not.

DR. BARD: Yes, there is one volume that says official volume.

THE CHAIRMAN: Any further question or comment on this Section? Mr. Case?

MR. CASE: Mr. Chairman, I am a little disturbed by the omission which the Committee recognizes on Page 5 of the Directive, which I believe the Commission gave the Committee at the Easton meeting, and that was to specify in the Section what the Court of Appeals might do in the event that the plans reached the court in some specified type of procedure.

DR. BARD: May I stop you a moment because that was our second. To save time, I wouldn't ordinarily do this, Mr. Case. You remember I said there was an addendum. This is our addendum.

Our decision was to reverse this view, and now to recommend. Suppose I read this down and see whether this doesn't cover it.

MR. CASE: This is the addendum you are going to read that I haven't seen.

DR. BARD: Yes, the addendum will read, and we thought we would vote upon this part, Thereafter upon petition of any eligible voter, filed no later than 10 days after such plan has become law, the Court of Appeals for Maryland shall have original jurisdiction to review such plan of redistricting and to grant such legal or equitable relief as it may determine to be necessary.

MR. CASE: That is what I had in mind.

DR. BARD: But we thought we better get a thought on this part first.

THE CHAIRMAN: Any further question, comment about the Section as it is presented in the Report? I wanted to ask one question about the phrase in the third line from the end, or if so enacted, is not then valid law. What is meant by that?

DR. BARD: If the court decides it is not valid.

THE CHAIRMAN: If the court decides that it wasn't valid law initially. The only thing that I would concede that would change its status would be a repeal, and you are not contemplating that in this Section, I take it.

DR. BARD: We were thinking here, this came up at the Easton meeting.

THE CHAIRMAN: Is the phrase needed? When you say in the phrase below, as not enacted into law, doesn't that necessarily mean a valid law?

DR. BARD: You are probably right. It is not needed.

JUDGE ADKINS: Could this mean a change in the Supreme Court rules relating to the validity of the divisions that occurred from the time of the enactment of the law and the subsequent effective date of the next election? Suppose they came out and said you had to be not less than 1 per cent, and this was 3 per cent, is that what it means?

DR. BARD: This is what we said at Easton.

There might be such cases. However, the addendum would take care of that.

THE CHAIRMAN: I take it, if that were the case, Judge Adkins, that you don't need that phrase, because it would then not have been enacted into law by later decision of the Supreme Court, it is not a valid law.

DR. BARD: Or it be a petition filed no later than 10 days after. If the addendum is adopted, I don't see why you need it.

THE CHAIRMAN: Do you delete it?

DR. BARD: I delete it.

THE CHAIRMAN: You delete the phrase, or if so enacted, is not then valid law. Any further comment or question about the Section as it is presented? Then go ahead with the addendum.

DR. BARD: Shall I read it again?

THE CHAIRMAN: Yes, slowly.

DR. BARD: Thereafter, upon petition of any eligible voter filed no later than 10 days after such plan has become law, the Court of Appeals for Maryland shall have original jurisdiction to review such plan of

redistricting and to grant such legal or equitable relief as it may determine to be necessary.

I would like for Mr. Scanlan to speak to that point, because he has had some intimate relationship with this.

MR. SCANLAN: When I got this Report up in the mountains of Tennessee, I was a little disturbed about the omission, and my recollection was just as Mr. Case's was; that in adopting Mr. Case's compromise, it was no intention to knock out the judicial review provisions. Unless there is something like this, there are two problems. It is all very well to say, as the Committee did here, that the courts would take appropriate action anyway, but the first place you would have to go to the Circuit Court of Appeals presumably for Anne Arundel County, and you have added three months to the proceeding by the necessity of that step; and you run into the situation where the court says, Well, the election is upon us, let it stand for one more time. There is a second objection, perhaps a little more lawyers' law than that one, but in view of the fact of the very vague provision, is that,

despite the efforts of this Committee in Section 3, we just have a general exhortation, representation be based on population so far as practicable. I can see the Maryland Court of Appeals taking the position that the new Constitution was adopted, there was an attempt to give us jurisdiction, that an attempt was not adopted. So far as the law of the State of Maryland is concerned, the question of representation in the General Assembly is purely a political question.

Now, so far as the Federal Constitution is concerned, that is another matter, and the basis of Judge Henderson's first dissent in the very first Court of Appeals decision, where the Court of Appeals held it did have jurisdiction, was it was the law of the State of Maryland provided no jurisdiction. He was on very sound ground, but he did not prevail. I can see a subsequent court with a new Constitution where nothing was said about the right of the Court of Appeals to review this, under State law, taking the position that the Court of Appeals of Maryland had no jurisdiction, that under the State Constitution, it was purely a political question. You want

to run to the Federal courts, that is one thing; but I would hope in solving this problem, we would try to keep it in the Court of Maryland and for this second reason, I think it is important to have an addendum of the kind that Dr. Bard read. I don't have any particular brief for that language, but to make it clear very quickly, no more than 10 days, so you can't string it out, the Court of Appeals, and no other court leaving aside the intermediate step the Circuit Court of Anne Arundel County can review the plan whether it be the Legislature or the Governor and grant such relief as it may deem necessary.

For those two reasons, I think this provision or something like it is most important to this Section of the Constitution, namely to make it clear that our own State court, namely the Court of Appeals for Maryland, would have jurisdiction to review the plan very promptly. I wouldn't have more than 10 days.

MR. SAYRE: On the 10 days, is that 10 days for a citizen to file a petition or 10 days in which 10 days have to be undertaken by the citizen and court?

MR. SCANLAN: 10 days. You have to give the

man time.

MR. CASE: Could you read it once more, please, Mr. Chairman?

THE CHAIRMAN: Dr. Bard?

DR. BARD: Thereafter, upon petition of any eligible voter filed no later than 10 days after such plan became law, the Court of Appeals for Maryland shall have original jurisdiction to review such plan of redistricting and to grant such legal or equitable relief as it might determine to be necessary.

MR. CASE: Now, the thing that disturbs me about the language, the concept is that the use of the words, grant such legal or equitable relief, might be construed by the court as not giving it full power to make its own plan or revise or modify the existing plan.

I am fully aware of the fact that at least two Federal courts have acted in this area, but it has not been passed upon by the Supreme Court, and even if it were, the State court might say that while the Federal courts have the right to draw a plan that this is based, that they have this right because it is based on Federal law

primarily the equal protection clause, and that the only legal or equitable relief the court could grant would be to send the plan back to the Governor and start the whole process over again, and I am wondering if you would accept the following language as insertion into what you already have, where it says, The court may, blah, blah, and may adopt, revise or modify the plan or grant such other legal or equitable relief as it may deem necessary.

DR. BARD: That is rule.

THE CHAIRMAN: You accept the language?

DR. BARD: Yes.

MR. CLAGETT: Why couldn't you shorten that and say, determine the matter?

THE CHAIRMAN: I don't think that meets Mr. Case's Report.

MR. CLAGETT: If they have jurisdiction, what you want them to do is to decide it.

MR. CASE: They may decide it is a valid plan, but since the right to draw a new plan is strictly a Federal question, the court may adopt, revise or modify the plan or grant such other legal or equitable relief.

MR. HAILE: Revise and modify are synonymous.

THE CHAIRMAN: Let's not get into a debate of language. The Committee would accept, I take it, the principle of Mr. Case's language, the precise phraseology to be worked out?

DR. BARD: Right.

THE CHAIRMAN: Any further question or discussion? I am not clear on the language whether as drawn you are referring only to it by saying such plan, the Governor's plan or whatever plan happens to be then in law.

DR. BARD: Whatever plans.

MR. SCANLAN: In other words, whether it was the Legislature's or the Governor's.

THE CHAIRMAN: I am not sure from the language you read whether that would be the effect of it in view of the fact that it follows immediately after the phrase that the plan of redistricting as presented to the General Assembly by the Governor shall become law, again without referring to precise phraseology if you keep that in mind.

One other suggestion, the Committee on the Judiciary Department is proposing an Article which will leave the jurisdiction of all the courts to be, with certain broad limitations such as some courts having original and other appellate jurisdiction, leaving that to the Legislature. Would the Committee be willing to have this addendum referred back to it to consider in conjunction with the Committee on the Judiciary Department as to whether it would be desirable to have appropriate language leaving that flexibility in it?

DR. BARD: Yes.

MR. MILLER: Personally, as a member of the Committee, I think that would be a mistake, because the time limit is bound to be very short there, and I think I would recommend that we leave the original jurisdiction in this one matter in the hands of the highest court in this case.

THE CHAIRMAN: What I was thinking was that under the proposed Judiciary Article, the Court of Appeals is going to have broad rule making power, and you have another Appellate Court, and conceivably you might want to let

this be determined by ruling of the Court of Appeals as to which court should decide it.

MR. CASE: Mr. Chairman, my impression, and I can't pick it out right now, it was my impression that the Supreme Court as it will be called, there was a caveat in the Report.

THE CHAIRMAN: Oh, there is a provision that it could have jurisdiction. That is true.

MR. CASE: And it seems to me this matter is of such importance that it ought to be stated in the Constitution as an inflexible rule because here you are talking about the Legislature redistricting itself, and I don't know what kind of jurisdiction might, or rule might come out of it. I see nothing wrong therefore, for in this one and very important instances to have a constitutional mandate on the question. In other words, I see no reason for flexibility here.

THE CHAIRMAN: If that is the feeling of the Commission, let's do it that way, but call it the Supreme Court because under the Judiciary Article, it will not be the Court of Appeals.

DR. BARD: All right. We will change the wording.

THE CHAIRMAN: Is that the purpose of your addendum as Mr. Case indicated?

DR. BARD: Yes.

THE CHAIRMAN: Any further question as to the addendum?

DR. BARD: Shall we go to Section 6? If you have your Constitutions handy, I would like for you to turn to Page 18, Section 6 of Article 3, because there is an important point which we are making here.

Section 6, The members of the Senate and the members of the House of Delegates shall be elected by the qualified voters of the legislative districts which they represent, respectively, to serve for a term of four years commencing on the third Wednesday of January next following their election.

Please note that they don't serve from the day of their election which our present Constitution says, and which actually has not been operative anyway. We went over this at Easton. We are now making it clear

they would be serving for a term of four years, commencing on the third Wednesday of January next following their election.

THE CHAIRMAN: Any questions?

MRS. FREEDLANDER: For the sake of conciseness, I wonder if the Committee would accept this change that the members of the General Assembly or of each House shall be elected by the qualified voters instead of repeating the words, members of the Senate and members of the House. We agree the members of the General Assembly shall be elected by the qualified voters of the legislative districts which they represent.

DR. BARD: The reason why I think in this case, Mrs. Freedlander, it might be better to name them both because in so many States they do serve different terms. Some of them/who serve the House might serve a two-year term, and the Senate a four-year term, and I think this makes it clear from the very beginning.

MRS. FREEDLANDER: We say, to serve for a term of four years.

THE CHAIRMAN: Wouldn't it be clear if you said,

members of the General Assembly?

DR. BARD: I see no great objection to it, but we really mean each of these. It would be all right with us.

THE CHAIRMAN: You agree to change it?

DR. BARD: I see no objection.

THE CHAIRMAN: Then it would read, The members of the General Assembly shall be elected by the qualified voters of the legislative district which they shall represent, respectively.

MRS. FREEDLANDER: Delete, respectively.

THE CHAIRMAN: To serve for a term of four years commencing on the third Wednesday of January following their election.

Any further question? Section 7.

DR. BARD: Here I am afraid we are going to be persistent again. That is the only point, Judge. I shouldn't awaken you to this fact. We have revised this statement in the light of the recommendation at Easton. However, we want to call your attention to the fact that we do believe that the way our Fourth Report stated this,

it would be an opportunity to have a continuing body.

By the way, we like the word, continuing, rather than, continuous. It just troubles us that the General Assembly itself would not have the power to convene if it so desired. The way we have this now, the Governor may call a special session. The last sentence, The Governor may convene the General Assembly in special session at any time, but the Legislature does not have this power; and yet our entire point of focus has been to give each body the power that it needs in terms of fulfilling its requirements, and we have said over and over again that the mere fact that we indicate that the General Assembly may continue its session so long as in its judgment the public interest may require; and we would intend to either put a period there and leave the rest out or state it as we did in the Fourth Edition when we said the General Assembly shall be a continuing body, meeting in regular annual sessions.

First, however, I think it would be more important for us to vote with finality on this question which has been very troublesome to us in that the decision

at Easton did not give the Legislature the authority we felt it should have. We still believe it should be, continuing body.

MR. BOND: I would like to point out to Dr. Bard that he is not being too persistent because you have a partial victory at Easton. Instead of having the normal 70-day session, the Commission as a compromise, gave you an extra 30 days if the Legislature feels they have to stay in session. Again, I don't think this should be continually debated at length by us. We have the problems of the effective date of legislation. We have the problems of dispatch of business. We have continuing legislative bodies that are not doing the jobs as they should, and we have the recommendations of our own legislative leaders that there should be a deadline on such.

MR. MILLER: We certainly don't want to prolong this, but I do think the Commission should bear one thing in mind, and that is the only point, that I would like this to be reconsidered, and that is that our concept of government is three distinct bodies of equal powers and

responsibilities.

Now the courts can meet whenever they want. The Executive Department is constantly in session, and it seems to me that to maintain the Legislature, the Legislative branch and the dignity it is entitled to, there ought to be some loophole whereby if they have served 100 days, they don't go home and they are out of business unless the Governor chooses to call them. Now, it is not with the idea of prolonging their duties, but it seems to me we are making them second class citizens as compared with the Executive and Judicial branches.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I would like to state I voted against the continuing body as contained in the Fourth Report, but I have since had other thoughts. If the Legislature is going to be dealing with greater and greater general purpose problems and they are going to increase in complexity as time goes on, we should not put the pressure upon them to solve those problems but leave it to their own discretion; and if they need the additional time to work out a problem to come to a proper solution,

they should be entitled to do so, and I will change my vote if it goes back up for reconsideration.

MR. GENTRY: Offsetting the work they will be doing, they will be relieved of local matters, and there wouldn't be any reason to carry it any further than 70.

MRS. BOTHE: We are going to be in continuous session if we don't put this to rest. I voted with the Committee and in the majority last time, but I intend to vote for the proposed Section and against reconsideration this time. I think the arguments were fully aired. While I voted with the Committee, I had some thoughts. I think they were resolved after very thorough debate in the last session to which nothing has been added, and for that reason and others, I would certainly not want to reconsider.

DR. BARD: Mr. Chairman, I want to say that Congressman Miller's point is a new one. When we went back, it was troublesome to us that we did not have full faith in the Legislature. This concept whereby we were going to let each branch have enough elbow room so that it might handle decisions was not presented. This

was a new element.

THE CHAIRMAN: Dr. Bard, may I ask you this. My recollections of the debate at the last meeting, the Commission didn't controvert the principle that you have just announced, but decided as it did by a rather narrow margin because of two things that have been mentioned today at least, and one is the desirability from the point of view of public calm that there be a period of time when the Legislature is not in session and the desirability of having business in general, be able to know that the Legislature is going to be in session at a particular time and not in session at another time. Would it be possible to accomplish your purpose and not defeat the other by making some provision whereby the General Assembly by its presiding officers perhaps, or a specified number of persons, could call itself back into session?

MR. SCANLAN: I didn't want to sell Harry's motion down the river, but I was going to say if that was defeated, I was going to suggest a compromise provision appearing at the end of the Section, reading, the last word in it now is, time, and must convene the General

Assembly in special session upon the written request of a majority of the members of both Houses thereof. That at least, while not giving you a continuing General Assembly which has been voted down, would put the General Assembly at least on a level equal with the Governor. If the Governor has the power to call that body in special session, it seems to me not inapproproiate to give the body itself the power to convene itself because you might have an important matter before the State, the Governor and General Assembly at loggerheads, the Governor not wanting to face up to the problem and the pressures from the people to face up to it in that type of situation unless the Governor agreed to convene the Legislature in special session --

MR. MILLER: That approach would be entirely agreeable to those of us that would take the Legislative branch out of being as second class citizens.

THE CHAIRMAN: Mr. Case?

MR. CASE: Mr. Chairman, I want to approach this matter as apparently I must again in the spirit in which Mrs. Bothe spoke. This question was debated for

fully an hour at Easton. I know of three members of the Commission who were present at that time and not present tonight who voted for the Report as it stands now and not as the Committee would like to see it stand. Two of those three members have had a great deal of experience in legislative matters and spoke rather eloquently and forceably for their point of view and the point of view that the Commission finally adopted.

Now, it just seems to me wrong to have the Committee come back in here with the same thing again, reopen the whole matter again, have it presented to the Commission which is not full-staffed here tonight, and I think the Commission should not reverse itself on this, and if there is any intention of doing so, I think a full poll should be taken of every member of the Commission before any reversal of its stand is taken.

DR. BARD: This is a new position, Mr. Case. The amendment which was made to the motion which I accepted was never voted upon.

THE CHAIRMAN: I am sorry I didn't understand that. Mr. Scanlan is accepting the amendment.

MR. CASE: Well, what is it?

MR. SCANLAN: I now move this, and as I understood the parliamentary procedure, there was a motion to reconsider what the Commission did at Easton on this point of a continuing.

MR. CASE: That is what I am speaking to.

MR. SCANLAN: I would move to substitute for that motion to reconsider a motion which would add the following language at the next to the last sentence of the present proposed Section 7, Comma, and must convene the General Assembly in special session upon the written request of a majority of the members of both Houses thereof. That, I think, is certainly a new point, and the mere fact you get new ideas as the Commission progresses in its work shouldn't mean you are exposed to the penalty that you voted on it at the previous meeting and can't vote on something new.

I would hope when the final Report of the Commission is presented to the full Commission, if enough members of the Commission at that time feel that language should be added, deleted, or changed, that it be done. But

putting that aside, I certainly think from the point of view of the parliamentary procedure this is a new matter. I agree with you and Mrs. Bothe we have been over the other point and have lost it.

THE CHAIRMAN: Read the language again.

MR. SCANLAN: Added to the last sentence, instead of a period after, time, that would become a comma, followed by this language, and must convene the General Assembly in special session upon the written request of a majority of the members of both Houses thereof. I don't think it would be abused.

MR. CASE: May I speak to this? Before getting into the merits of that, would you accept an amendment to your amendment that it be three-fifths of the members in writing instead of a majority since three-fifths are required to extend the session from 70 to 100 days?

MR. SCANLAN: I would.

MR. MILLER: I would so long as it is in their power.

THE CHAIRMAN: All right.

DR. BURDETTE: Is it proposed in this to be a three-fifths majority of all the members of the Legislature or three-fifths of each House?

THE CHAIRMAN: I raise the same question about the language of the amendment and the language of the Section itself. When you say, of both Houses, you mean three-fifths?

MR. SCANLAN: I mean each House; of the members of each house.

THE CHAIRMAN: Then in the fifth line, you mean to say, each House?

MR. SCANLAN: Yes.

MR. BOND: Mr. Chairman, I would like to comment on the amendment. I cannot accept Congressman Miller's characterization that this amendment takes the Legislature and makes them second class citizens. We have the Legislature, I also can't accept Mr. Scanlan's characterization that there may be a deadlog between the Governor and the Legislature and this device will give him a way of overcoming the deadlog in expediting business. I cannot feel that if a crisis confronts us

that any governor wouldn't call the Legislature in session to act on the crisis, and I think if you adopt this amendment imputes bad faith to a future Executive. I also feel that we have the recommendations of the business leaders, the Legislature leaders, and we have heard all the arguments on this thing, and I think it would be wrong for us when we have so many of our Commission members absent to even adopt this amendment.

THE CHAIRMAN: Any further discussion?

DR. BARD: I want to clarify. We never did get the view of the members of the Legislature as to whether they would like the idea of having the privilege of calling a special session through the procedure voted, Mr. Bond.

THE CHAIRMAN: Mrs. Freedlander?

MRS. FREEDLANDER: I want to state, Mr. Chairman, that Mr. Scanlan's provision appears in the model State Constitution as a provision, and it is not new to Maryland.

MR. GENTRY: I want to point out that if a governor, if during the regular session, if the bill was

passed and the Governor vetoed that bill, it would carry over to the next session. If this amendment is adopted, the Legislature could force the Governor to call them back in session and immediately pass, enact a law where he was vetoed rather than the cooling off period which is now provided.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I accept an amendment. Where it is simply three-fifths of the General Assembly.

MR. SCANLAN: Of each House.

MR. SAYRE: You would not accept as the body as a whole?

MR. SCANLAN: That would be inconsistent with the three-fifths throughout the document.

MR. HOFF: As a matter of fact, the purpose of this amendment would be to eliminate this provision in here about the extension of 30 days, because any three-fifths vote or signature of three-fifths of each House could call the Legislature back into continuous session which is what we are trying to avoid.

THE CHAIRMAN: Any further discussion? Ready

for the question? Here again, this Section has been debated twice before at two previous meetings, but unlike the other action, the actions taken at the two previous meetings were not the same. The last session by a very narrow margin reversed the action of the previous session. You all understand the amendments, the several amendments, that is.

JUDGE ADKINS: Are we voting now on the amendment?

THE CHAIRMAN: Voting now on the amendment of Section 7 to substitute for, both, and to strike the "s" on Houses in the fifth line, to strike the period at the end of the Section and add, and must convene the General Assembly in special session upon the written request of three-fifths of the members of each House thereof.

You ready for the question? All those in favor, signify by a show of hands. Contrary? The amendment is lost by a tie vote. So there is no question about it, a show of hands again, those in favor? Those opposed? The amendment is lost. Any further question

about Section 7? I take it that the Committee accepts the first part of the amendment, changing both Houses to, each House, in the fifth line.

DR. BARD: Yes.

THE CHAIRMAN: Any objection to that? Any further question on Section 7? Section 8.

DR. BARD: Section 8 reads as amended at Easton, and I think the comment makes clear what was discussed at Easton.

THE CHAIRMAN: Any question on Section 8? Section 9.

DR. BARD: The same. We did word this in affirmative language after the recommendation was so made.

THE CHAIRMAN: Any question? Section 10.

DR. BARD: Section 10 takes care of a matter of an election, next regular biennial election, for any time for remaining portions of the unexpired term. This is a significant change in the Constitution. This is formulated at the Easton meeting.

THE CHAIRMAN: Any question? Dr. Michener?

DR. MICHENER: I wasn't at the Easton meeting. If a person was elected as an independent, he is not a

member of a political party, and the previous wording, political affiliation -- it says the Governor must appoint him from the same political party.

DR. BARD: The Constitution says the same at present, and I would assume, Governor Lane, you might want to comment on this. What has been done under this matter? Have you ever had an independent to replace?

GOVERNOR LANE: I never had that situation come up. It is purely academic.

DR. BARD: If it had, wouldn't you have the choice of determining your own selection in this case?

GOVERNOR LANE: You are asking me to interpret this previous provision of the Constitution upon which there has been no decision?

DR. BARD: I think it is a good question, Mr. Chairman.

MR. SCANLAN: It is liable to happen in my county.

THE CHAIRMAN: Well, can we refer the Section back to the Committee to consider whether any change in phraseology should be made to cover the point?

DR. BARD: Might we have some expression from the Committee as to whether the Governor should be empowered to appoint whomever he so desired or through recommendation? Can we get so expression?

THE CHAIRMAN: Well I would take it unless there is objection from the membership that the previous action would mean that you would select from the same political party if the man was a member of the political party;and if he wasn't, he wouldn't have to select from any political party.

GOVERNOR LANE: Purely a guess, but if he is registered as an independent, then the question arises in my mind as to whether or not that doesn't release the Governor from this requirement and give him freedom to appoint anybody whom he thinks would adequately fill the job.

DR. BARD: Would you need a statement in the Constitution to take care of this particular situation then?

GOVERNOR LANE: It has been some time, but that is what I would do.

THE CHAIRMAN: Refer it back to the Committee to consider whether it is necessary to have anything.

MR. MILLER: To save time, Mr. Chairman, I would suggest an amendment to say political party or group; or group, would certainly take care of his appointing another independent.

THE CHAIRMAN: Let's let the Committee think about the language.

GOVERNOR LANE: What group would you recognize?

MR. MINDEL: Suppose the man was registered as a Democrat and runs on a petition and runs as an independent and gets petitioned, what do we have then?

MR. CLAGETT: Why wouldn't, allegiance, solve the whole problem?

THE CHAIRMAN: I think the comments have indicated the desirability of looking at it. Before you get to the next Section, I want to ask if you think it desirable in the next to last line to insert the word, general, by regular and biennial.

MR. GENTRY: Why don't you strike, biennial?

THE CHAIRMAN: I think the Committee wanted it --

DR. BARD: Wouldn't he need to file in the primary as well as the general?

THE CHAIRMAN: Well, that still wouldn't affect this sentence. You wouldn't have the term end at the primary. This would still be general.

MR. SCANLAN: We use the word, biennial, to insure the special election to be held at the time of the conventional elections.

THE CHAIRMAN: But it would be the general election and not the primary.

JUDGE ADKINS: Was that matter debated at Easton, having a member of the Legislature elected?

THE CHAIRMAN: Discussed at length.

MR. SCANLAN: I remember Dick Case was opposed to it. You thought it would be unnecessary expense.

THE CHAIRMAN: Any further discussion of the question as to Section 10? Go ahead.

DR. BARD: Section 11. No senator or delegate, after qualifying as such, notwithstanding he may thereafter resign, shall during the whole period of time for which he was elected be eligible to any office which

shall have been created, or the salary or profits of which shall have been increased, during such term.

That would mean if he resigned, he still would not be eligible if the office were created during this period.

MR. CASE: Mr. Chairman, this Section gives me a lot of trouble. In the first place, I think it is perfectly true that the Section is taken from Section 17 of Article 3, but I call the Commission's attention that it has been more on order in the breach than the observance because the Constitution in the Judiciary Article makes abundantly clear that it has no application to judges in this State and judgeships have been created by the Legislature and for a great many years now, and vacancies in those offices have been appointed people, the people who have been appointed to those vacancies have been members of the House or Senate during which the judgeship was created, so actually the provision in Section 17 dealing with this subject is, while originally was the rule, is no longer the rule for our most important offices; and I think for this reason, some real

thought ought to be given to whether or not you want to go back now to what used to be the rule.

Quite apart from that, if you will notice it says that no senator or delegate, after qualifying shall be eligible for any office created. I have just spoken to that, which shall have been created or the salaries or profits of which shall have been increased during the term. I pose this question. Suppose a senator in his first year of a four-year term is appointed to the Court of Appeals. Suppose in the third year of that term after he has been serving for two years, the Legislature increases the salary of all of the judges of the Court of Appeals. Does this mean that that judge is disqualified because of that act? This language would so indicate, and I submit that it is incongruous in this respect.

DR. BARD: Change it to, appointed.

MRS. FREEDLANDER: This is identical to Section 17.

MR. CASE: There is another section in the Constitution. What we did was, back in '48 we amended

the Judiciary Article to take the judges out of this.

DR. BURDETTE: I should like to advocate in this fourth line where it says, elected be elibigle, be appointed, if a member of the Legislature should resign and be elected thereto, that the people should not be allowed the power to do that. In answer to Mr. Case's problem about the Court of Appeals because of the raise of salaries after he was appointed, the application would be just to the appointment process.

MR. CLAGETT: Mr. Chairman, I have another problem here and that is, suppose as we provide in the Political Subdivision Article that an intergovernmental authority is created superimposed on top of an existing county and municipal or municipal combination and the restriction here would prevent any senator or delegate from such an appointment and that would be a very grievous or could possibly be a very grievous loss of the experience and value of that man in such a position.

I don't know that we have really got to that problem.

DR. BURDETTE: I think the intent of this

business is to prevent the Legislature, it is said it is done to create some jobs so the fellows in the Legislature could get them, and I don't think we want the special purpose authorities in the State to be created for the Legislatures.

MRS. BOTHE: I wonder, I know it is possible. I know a number of the members of the Legislatures have gone on the bench, but they haven't been such bad members of the bench. Is the Committee actually going on experience which would dictate, require this kind of thing, or is it just a possibility that it may work grievously in the future, because from what my own knowledge is, it really has not been abused to my knowledge to the extent it would justify this kind of restriction in the Constitution which might run into all kinds of unforeseen roadblocks.

DR. BARD: In answer to your question, we would say that had this Section not been in the Constitution, we believe that there would be abuses despite the fact that there have been some exceptions to the Section; nevertheless, in theory, it certainly holds true

as being highly important, and our point is the mere fact that this Section has been in existence has meant. the exceptions that have been made have been difficult to be created, and that is why there has not been the abuse that you refer to.

MR. MILLER: I think, technically to answer your question also that the abuses have not been technical. They have amended the Constitution to take care of Senator X, Y or Z, and the fact that he has proved to be a good judge doesn't get away from the rather unhappy principle or effect on the public that somebody promotes legislation and then takes advantage of it.

THE CHAIRMAN: Any further discussion?

MR. BOND: Can the Committee tell us? A similar section in effect in many other State Constitutions.

THE CHAIRMAN: Mr. Brooks is checking that.

MR. CASE: I think the Commission ought to keep in mind the modern history of this concept, and that is that in support of what Mrs. Bothe said, the provision really has no place in the Constitution.

The amendment to the Judiciary Article, Congressman, was not made just to take care of some senator. The Article came about as the result of deliberations of the Bond Commission which was certainly one of the finest groups that we have ever had here in the State studying this subject, and at that time, it was decided to make the Court of Appeals jurisdiction appellate only and the Commission recommended that the Constitution also be amended so that judges could be appointed from the Legislature to pass the implementing constitutional amendment.

Subsequently, the Constitution was further amended to provide that the circuit judges and still subsequently and the amendment which is before the people today on the Court of Special Appeals has a similar provision saying the members of the General Assembly can fill that particular vacancy, all of which was supported by the Bar Association and has been supported by the Bar Association since as early as 1942.

MR. MILLER: But it was done by constitutional amendment.

MR. CASE: That is right, but my point is certainly the lawyers of the State voting on this very subject on several different occasions have all come to the conclusion each time, and in the case of Court of Special Appeals, it was a unanimous opinion that this Section at least as far as judges is concerned is not needed, and it would be no abuse. Now, as to whether there would be abuse in minor offices or not, I don't know, but I do know as far as the Judiciary is concerned, the present modern thinking of people is that it is not necessary. I just think we ought to rethink this whole thing, and see whether it is or isn't necessary.

DR. BARD: I would like to read from the Constitution if I might, Section 6 of Article 1, United States Constitution, Page 115.

No senator or representative shall during the time for which he was elected be appointed to any civil office under authority of the United Stated which shall have been created or the emoluments thereof shall have been increased during such time.

MR. BROOKS: By way of information in answer

to Mr. Bond's question, 29 States have similar provisions. The majority of them use, not to be appointed. A number of them, I would say, about ten, say not to be appointed or elected. A few of them, actually only the Maryland one states, eligible, use the word, eligible.

THE CHAIRMAN: Any further comment?

JUDGE ADKINS: This would eliminate any member of the Legislature from running for governor if the salary of governor were increased during the period of time he were in the Legislature.

THE CHAIRMAN: Correct. Any further question or discussion? Dr. Jenkins?

DR. JENKINS: I think the problem that we might face here would be in the appointing of a person rather than increasing the salary and ask the Committee if they would accept an amendment deleting emoluments or salary or profits. You think that would weaken it too much. I can foresee many problems arising if this is retained.

THE CHAIRMAN: I think Dr. Jenkins' suggestion is two-fold if I followed him. One is to change the word, eligible, to the word, appointed, and the second

is to delete the phrase, the salary or profits shall be increased.

DR. JENKINS: That is right, and this would apply only to appointing persons rather than the subsequent increases in salary.

DR. BARD: I think your point about salary or profits is a good one. We ought to discuss them separately.

MR. BROOKS: Ours is a new problem under this new Constitution since their salary heretofore was in the Constitution and was increased other than by a vote by the Legislature. This is a problem of greater magnitude than it was before.

DR. BARD: The point about elected, I would like to consider that one, but I would say, speaking for myself, I would certainly go along with eliminating, or the salary or profits of which shall have been increased during such term.

THE CHAIRMAN: In view of this discussion, it seems to me it might be desirable to refer this Section back to the Committee. I make two comments. I

agree with Mr. Case's comment about the judges with two identities. I think initially at least the activities of the Bar Association in supporting these amendments were due in part to the notion that they could not otherwise have gotten the Legislature to pass the constitutional amendment. Or to submit it to the people. But I also seem to remember reading in the newspaper recently a story dealing with the number of appointments by Governor Tawes in the past eight years which indicated very, very few members of the Legislature had been appointed to the bench. I wonder if it wouldn't be better for the Committee to reconsider this and look into both the questions that have been mentioned, and also these others and report back to the Commission.

MR. SCANLAN: Could we have the benefit of Mr. Case's suggestion to strike the whole section? If that motion passed by any significant vote --

THE CHAIRMAN: I don't think Mr. Case suggested that. I think he suggested a concern about it.

MR. CASE: That is right. Jacobs versus The People.

MR. SCANLAN: If there is substantial sentiment, restrictions of this sort aren't necessary, and the Legislature can be trusted, let's have the advantage of that sentiment rather than wrestling around with language.

THE CHAIRMAN: We are not suggesting referring the language back; we are suggesting referring the principle back to the Committee for further study.

MR. SCANLAN: We still don't have the general feeling of the Commission.

MRS. BOTHE: As one of the people who brought it up, I would much rather the Committee came back with something more concrete.

MR. MILLER: As a member of the Committee, I would like to know, Dr. Jenkins' proposal would cure the objections that Mr. Case had.

MR. CASE: They certainly would on the specific example I gave with reference to the appointment of a member of the Legislative, the salary of which was later increased; but as to the other, I think there is a philosophy here which needs some real in depth thinking, and I have particular reference to the idea of (a) whether

the idea is a good one at all, and (b) if it is good, is it good for everything, or should, as we now have, the judges be accepted from it or some other group of officers be accepted from it, and this, I think, takes real research and thought, and I would much prefer to see the Committee come back.

DR. BAIRD: We will come back.

Section 12, No senator or delegate shall be liable in any civil action or criminal prosecution for words spoken in any speech or debate in either House. That is Section 17 in the present Constitution.

THE CHAIRMAN: Any question? Discussion? I suggest for the Committee another area. Is it intentional that be limited to words spoken in debate in the House, not to embrace, for instance, a report of the Committee, a written report?

MR. MILLER: I don't think that was the intention of the Committee. I think they ought to have legislative privilege both in committee and on the floor.

THE CHAIRMAN: Could the Committee reconsider this Section?

MR. GENTRY: Maybe we can go back and use the venerable words of Article 10 of the Declaration of Rights, where they say, or proceedings, where they say, speech or debate.

THE CHAIRMAN: Jim, what was the Article?

MR. GENTRY: Article 10.

DR. BARD: Or proceedings, are the words used there.

MR. BROOKS: You say, speech, debate or proceedings.

THE CHAIRMAN: I would rather refer the question back.

MR. SAYRE: How does that work in Congress?

MR. BROOKS: There is a constitutional provision not quite like this, giving legislative immunity to Congress.

MR. MILLER: It has been held in the record whether spoken or filed.

DR. WINSLOW: And includes committee reports?

MR. MILLER: Yes, and it is a very important and sensitive thing. Very few legislators would have the

courage to go out and tell what they really thought about something. They might, when the record was printed months later be sued for slander or libel.

THE CHAIRMAN: Section 13.

DR. BARD: Each House shall be the final judge of the qualifications. If you want to read this, it is Section 19 of the Constitution. You have it right there.

THE CHAIRMAN: Should the word, may, be in front of compel? Is that correct?

DR. BARD: Yes.

DR. BURDETTE: I wonder if this is new language here from the old Constitution, and shall have power to compel the attendance and testimony of witnesses and the production of books and papers either before such House as a whole or before any committee thereof.

I ask this because this seems to be extremely sweeping language in this day of Federal legislative inquisition that I would hate to get started in the State of Maryland.

DR. BARD: As a matter of fact, if you look at

Page 14, you will note that we have deleted Section 24 dealing with the grand inquisition of the State which said that that be abolished entirely, and we have felt that this language takes care of any problem that might have come up under the Section.

DR. BURDETTE: In that language which you may talk about, they may send for persons whom they may judge necessary in the course of their affiars -- I haven't read it all. But this just looks like they can get every business in Maryland to talk about their profit statements.

JUDGE ADKINS: I agree with Dr. Burdette. This is entirely too broad and sweeping provision, give them the right to compel attendance of witnesses is one thing, but to compel books and papers is quite a horse of another color, because by the time the books and papers are produced, the damage is done. If you compel the right of a witness, he has the right to be there.

DR. BARD: We will go along with you, you want the deletion of, books and papers before? We shall have the power to compel an attendance of witnesses period.

And then, Each House may punish?

THE CHAIRMAN: You are not leaving in the House as a whole?

MR. SCANLAN: Wait a minute.

DR. BURDETTE: I don't want to go against --

THE CHAIRMAN: Let's get the deletion first.

DR. BARD: We are deleting, and the production of books and papers.

DR. BURDETTE: My query here is the compelling of testimony of witnesses might run in contravention to any provision we have, and I am not sure we have one that no person shall be required to testify against himself.

While this is not a criminal procedure, I think the Legislatures can call anybody in session and say, Well, did you shoot somebody or didn't you, that this contravenes that protection in fact.

MRS. FREEDLANDER: First, I know the present Constitution does state this, but I think it is grammatically incorrect, each House shall be the final judge of a qualification and elections, taking off the "s". I

don't think it is elections, and secondly, each House shall appoint its own officers and determine its rules of procedures. It modifies, officers. My point I want to make is, if we are allowing a legislative body to determine its own rules of procedure, we should not then tell them what the procedure should be for investigating purposes, namely what we say after that. If the Congress of the United States determines its investigating powers which is what we are stating here, so if we are going to say, its rules of procedures, I don't think we should tell them what to do.

THE CHAIRMAN: I am not sure I follow you. You mean you think the phrase --

MRS. FREEDLANDER: The power to summon witnesses or investigate for legislative purposes, is part of the rules of procedures of committees.

MR. BOND: I disagree with that. I think it is very important that committees in the Legislature be given the right of subpoena which they do not now have. I believe the legislative counsel can subpoena.

MRS. FREEDLANDER: This should be part of

procedures set up by the Committee.

MR. BOND: No, I think it is better to have it in the Constitution.

DR. BURDETTE: I would accept the statement, they have the power to subpoena, providing the power of subpoenas under the protection of the Constitution.

MR. BOND: The Fifth Amendment is in effect no matter where you are.

THE CHAIRMAN: Any further comment?

MRS. BOTHE: As I understand Section 21, I think the grand inquisition has only been called a couple of times that I can remember and Section 24, the way it apparently reads, while it gives all these powers to the Legislature, does it only in the event of a grand inquisition which is an extraordinary proceeding? I am not at all sure that it is desirable to give the committees in the Legislature individually subpoena powers of any sort.

MR. MILLER: We are not. We are giving it to the Legislature, and they can give it to the committee or not as they saw fit.

MRS. BOTHE: Under this proposed language, even striking out the, books and papers, as I would see it, is it/a particular committee composed maybe of three or four active members could subpoena at all.

MR. MILLER: Not unless they got authority from the committee to do it from the whole Legislature. Is that the intention of the committee authorized to exercise these powers, the whole Legislature?

MR. MILLER: The whole House. The House of Delegates or the Senate would have to empower a committee to issue subpoenas as to certain classifications in connection with certain things, but it would be a legislative act by the whole General Assembly, or not necessarily the whole General Assembly, but by one or the other of the houses.

THE CHAIRMAN: Further questions?

JUDGE ADKINS: I would make this comment. It seems to me if it is going to stand, there should be some reference in here to the fact that the testimony must be germane or relevant or something to some matter pending before the House to prevent fishing expeditions which the

Legislature might elect to go on. I don't have language to propose, but I will ask the Committee to put some limitation of germane use before the testimony can be compelled. Personally, I prefer to see this provision eliminated, because we have not had it in Maryland in our past. I don't think the Legislatures have been seriously impeded in their investigative work by not having it, and I think it sets a dangerous precedent.

If we are going to have it, for heaven's sake, let's try to limit it. When it comes to a vote, I shall probably vote against it.

MR. SCANLAN: I am familiar as anybody, I think, with the abuses of legislative investigations, not only on the part of the State Legislatures, and I don't mean our State Legislature, and certainly on the part of some of the committees of the Congress. But the mere fact of the power to stress at times has been abused, though in most instances that abuse has been rectified by court action is no argument for denying the power at all. I mean, certainly, as I vote here in these matters, I vote on the assumption that we are going to try to

trust our Legislature that we are going to try to have a modern State government that can keep abreast with the problems of the Twentieth Century, and I don't know in how many cases you can legislate intelligently, unless you legislate intelligently and get the facts and if you don't have power to compel witnesses to testify in certain situations, you are not going to get the facts; and we should not tie the hands of the Legislature by denying the power that they sometimes investigate promiscuously on some Federal administrative agencies. I would like the Legislature to do its job, and if it doesn't have the subpoena power, it can't do its job. But to deny them the power altogether, it seems to me to be denying them in part at least, the power to function as a modern legislature.

MR. CASE: The difficulty I have with this whole discussion is that if this clause which has been evaded here has been removed, then it seems to me that the Legislature has complete subpoena power to do all these things because all of the power is in the Legislature. As we have often said, the State Constitution does not

act as a grant of power but acts as a restriction on power. I don't think the language here adds a thing, really, to what the Legislature already has by its very nature and sovereignty. If you want to put some curtailment on the power of the Legislature to give itself the subpoena power, calling in witnesses, that is fine; that is one thing. But it seems to me you are talking about very little here because this language was merely declaratory of the rights the Legislature already has.

MR. SAYRE: I have two questions, and Mr. Case just raised, that I don't see where this adds anything to the existing Constitution as to its powers. It has that power now, does it not, to subpoena? And the second question I have is, maybe it is all right, why did you delete the part that, No member shall be expelled a second time for the same offense?

THE CHAIRMAN: That is referred to in the Report.

MR. BOND: I might only comment that in discussing this matter with the Committee of this Commission, they certainly didn't seem to believe they had the subpoena power because they referred to the Baltimore Light

Bill and how they tried to get certain information they were unable to obtain. There is some doubt in my mind that the members of the Legislature do have the subpoena power. Certainly, I am agreeable to putting the safeguard in that Judge Adkins referred to that any subpoena should be in the legislative process to investigate legislative problems.

MR. CASE: Just in answer to that, Mr. Bond, the Code is replete with section after section where agencies have been created and legislatures granted them complete subpoena power, and so if some other State agency -- it is rather incongruous, it seems to me that they couldn't give it to themselves.

THE CHAIRMAN: As I understand it, the Chairman wants to take the Section back for future consideration in light of these comments. Section 14.

DR. BARD: A majority of all the members of each House shall constitute a quorum for the transaction of business; but a smaller number may adjourn from day to day and compel the attendance of absent members, et cetera. This is pretty much like the language of Section 20.

THE CHAIRMAN: Any questions? Any comment? Section 15.

DR. BARD: Each house shall keep a journal of its proceedings and cause the same to be published. No bill shall become a law unless it be passed in each House by a majority of the members present, and on its final passage the Yea and Nay votes be recorded in the journal of the House finally passing such bill; nor shall any resolution requiring the action of both Houses be passed except in the same manner.

Now, the point here is, majority of those present.

THE CHAIRMAN: We have made another change also, I think, in that the questions and answers are now recorded in the journal of each House, and you are providing it be recorded in the House finally passing the bill.

DR. BARD: To save time.

THE CHAIRMAN: To save time.

DR. BARD: Well, you recall the issue that came up, Mr. Brooks?

MR. BROOKS: I don't recall anything concerning the words, recorded in the journal of the House finally passing such bill.

MR. SCANLAN: I wasn't at the meeting, but I would be against this.

MR. BROOKS: I am puzzled by it.

MR. MILLER: I don't remember having seen it.

THE CHAIRMAN: I take it the Committee goes back to the language of the present Constitution, be recorded in the journal of each House.

DR. JENKINS: Mr. Chairman, why is it necessary to go into such detail in the Constitution, the proposal in Section 13 to be restudied, each House shall determine its rules of procedure. It seems to me that many of the things here might well be statutory rather than constitutional.

THE CHAIRMAN: There is a reason for it in this instance, Dr. Jenkins. You want to comment, Dr. Bard?

DR. JENKINS: I pass that on to the Committee.

DR. BARD: It is necessary that it give the power to the two Houses concerned.

THE CHAIRMAN: I think the importance here is that it will be a public record to which anyone can go to get the results of the election. This becomes very important. What exactly would the change be, Yea and Nay votes be recorded in the journal?

DR. BARD: Of each House.

THE CHAIRMAN: Upon final passage.

JUDGE ADKINS: I have another point. I think it is a mistake to permit passage of a bill by 25 per cent of the members of a legislature which is the effective rule of this provision, 25 plus one. I don't think that is good representative government or anything else.

DR. BARD: This procedure is used in Congress effectively. Used in the number of State legislatures, and Congressman Miller, you want to speak to this point?

MR. MILLER: I think there is no danger whatsoever because if a delegate or senator may have very good reasons for not having to go on the floor if it is something that isn't important, but if he is not going to be there on the final passage of the important bill, but you said, Will the Legislature with the need of

having a lot of people that might be busy in committee coming on the floor and an important bill isn't going to get through on any 25 votes.

They had to change that in Washington years ago because it was used as a means of blocking legislation particularly if you have a fixed session. You can send a lot of people out of town and then call up a bill and you can't get a majority, a quorum can always be asked for. Nothing can be done without a quorum.

JUDGE ADKINS: I think your problems in the Congress are different from problems in the State Legislature. I think this gives the leadership of the Legislature entirely too much power to pass bills without adequate notice. The Committee Chairman can touch the time when he has his own little coterie of people on the floor, vote it out without any kind of call.

MR. MILLER: You think he could pass it without a quorum?

JUDGE ADKINS: No, but you can have a bare quorum and be in session and nobody suggests the absence of a quorum, and your record shows a quorum, so

you can get a 25 per cent plus one of your Legislature.

MR. MILLER: It depends on whether you think your Legislature is trustworthy or maybe it isn't. If it isn't, make it like a jury and have them all agree.

JUDGE ADKINS: I don't think that is true.

DR. BARD: We thought there might be a group that could keep passage of a bill from not being present.

JUDGE ADKINS: That would not exist for any length of time. I can't imagine a situation where they would absent themselves for the remaining of the legislative session simply to keep a bill from being passed on. You are creating a cure which is a lot worse than the problem you are trying to prevent; to permit the manipulation of bills through the Legislature without having the majority of the members voting on the passage is a danger at the State legislative level.

DR. MICHENER: What you are referring to, the people in the minority could walk off the floor and the remaining ones raise the question of the quorum and you could stop it. That danger that he was posing is one that you can avoid under this language.

DR. BURDETTE: I don't think the quorum is very serious. I would hope that the evidence of a lack of quorum in the rollcall vote would invalidate the legislation. What I think is much more dangerous is the other point you make, and quite a change from the Constitution of Maryland now, that the Commission ought to be aware of.

It is on Page 23 of the present Constitution, No bill shall become a law unless it be passed in each House by a majority of the full number of the members elected, this is a switch, you see, as Judge Adkins says, of a requirement of the majority of the entire Legislature to the possibility of one over 25 per cent as the absolute minimum which is quite a drastic change in our procedure.

DR. BARD: We recognize this, and that is why it is called to our attention.

THE CHAIRMAN: Any further discussion?

DR. BARD: I would like to move that we adopt the recommendation.

THE CHAIRMAN: The procedure we have been following, we pass them unless there is an objection. But

I thought Judge Adkins indicated he wanted to move.

JUDGE ADKINS: If the matter is up for consideration, I would propose that Section 15 be amended to strike out the language, the word, present, so that the Section would then read, No bill shall become law unless it be passed in each House.

THE CHAIRMAN: Members elected.

JUDGE ADKINS: Whom number. Members elected.

DR. MICHENER: Just point out, you put the word, elected, in here another new danger which Congress has been facing up to have a common catastrophe of various possibilities where you have a common death and you appoint some members, you ought to have a majority of the members.

JUDGE ADKINS: I would accept that.

THE CHAIRMAN: Then your first suggestion, the majority of the member of each House?

JUDGE ADKINS: Right.

DR. BURDETTE: The whole majority of the members.

THE CHAIRMAN: The majority of the members of

the House means that, doesn't it?

Is there a second to the motion?

MR. CASE: Second.

THE CHAIRMAN: Any further discussion? Ready for the question? The question arises on the motion to delete the word, present, in the fourth line of Section 15 and to insert in lieu thereof, or strike the "s", delete the word, present, and insert in lieu thereof the words, of each House.

All those in favor, signify by a show of hands. Contrary? Motion carried, 16 to 2. Any further discussion of this Section. Section 16.

DR. BARD: The House of Delegates shall have the sole power of impeachment in all cases; but a majority of all the members elected must concur in the impeachment. All impeachments shall be tried by the Senate, but no person shall be convicted without the concurrence of two-thirds of all the senators elected.

THE CHAIRMAN: Any questions?

MR. MILLER: You want to leave out, elected, in that instance also?

THE CHAIRMAN: Delete the word, elected, in the third line.

DR. BARD: Right.

THE CHAIRMAN: And the last line also. Any further questions? Section 17.

DR. BARD: Any bill may originate in either House of the General Assembly and be altered, amended, passed or rejected by the other. No final vote for passage of a bill shall be taken until a bill shall have been printed and until the third calendar day after introduction.

THE CHAIRMAN: Any comment?

MRS. FREEDLANDER: Again, I raise the question: I can understand the second sentence and the reason for it, but I wonder why the first sentence would not be an internal problem, why is it necessary to have this a constitutional provision?

MR. SCANLAN: The Senate could, say that any bill could be voted up or down but no amendment.

DR. BURDETTE: Maybe someplace later, not having read this earlier.

THE CHAIRMAN: Can't be much later, there is only one more Section.

DR. BURDETTE: Is it the intention of the Committee to cut out the provision about, legislation shall not be introduced in the latter days of the session?

THE CHAIRMAN: Yes, that is coming. You want to state it, Dr. Bard? Any further questions?

MR. GENTRY: The present Constitution says the laws are to be read on three different days. Is this to be preserved?

THE CHAIRMAN: No, the Committee comments on this in its Report. Any further questions? You want to discuss it? I don't mean to cut you off.

MR. GENTRY: There are no three readings.

THE CHAIRMAN: State the position of the Committee, Dr. Bard.

DR. BARD: I think the statement is right here, the last paragraph, this should be left to the General Assembly itself. Require bills to be read on three different days is a legislative procedure in the Anglo-American tradition.

Nevertheless, the Committee is of the opinion that such a provision is not effective in accomplishing its objective of preventing the passage of hasty or ill-advised legislation, particularly in viewof all the other checks available in a bicameral system. The Committee does recommend that the new Constitution require as a minimum that bills must be printed before passage and cannot be passed until at least three days after introduction.

MRS. BOTHE: I was wondering if three days after printing might be better, since this could be very hasty. Under this language, a bill could be passed the first day it is available for anyone to get a look at it in black and white.

MR. MILLER: On the other hand, I think our reasoning is that there may be emergencies where everybody wants to get it out and the printers might be on strike or something.

MRS. BOTHE: I really feel to have a bill before anyone has a chance to look at it --

MR. MILLER: But if there are enough people

who are not familiar with it, they can hold it up.

DR. BARD: How would you word it?

MRS. BOTHE: I would make the three days run from the time the bill is printed.

THE CHAIRMAN: I suggest to you if you do this or the existing change, you are preventing a one-day special session.

MR. CASE: Plus the fact in many cases, the bills are printed long before the session even opens.

MRS. BOTHE: That is all right. It is just a question of having a bill.

MR. CASE: That accomplishes just what you seek to avoid.

MRS. BOTHE: I am not trying to create a waiting period, but just some opportunity for interested people to read the bill in black and white, and under this provision, it could come out now or before it is passed, or even ten minutes.

THE CHAIRMAN: I think the suggested change maybe you don't follow it -- I am not sure it was simply to take out the word, introduction, at the end of the

sentence and substitute, printing.

MR. CASE: My point is that under that system, the bill could have been printed five days before the session began which often happens, and you could bring it down and pass it within three minutes after it was introduced.

MRS. BOTHE: That is right.

MR. CASE: I think that is wrong.

MR. CLAGETT: Mr. Chairman, actually if the members who are required to give a final vote have not had a chance to acquaint themselves, they can always raise the point before the vote is taken; so it says here, no final vote for passage shall be taken, so aren't we really debating over something that isn't necessary?

MR. SCANLAN: Mr. Chairman, I wasn't at the meeting of the Legislative Committee. I was on vacation, and I am not a slave to the model, but the model accommodates your point and at the same time allays Dick's fears that the bill would have to lay on the desk of the members for five days.

DR. BURDETTE: Are you talking about putting a period after the word, printed, in the last sentence?

THE CHAIRMAN: No.

DR. BURDETTE: One-day session is out as worded here by the third calendar day after introduction.

THE CHAIRMAN: Mrs. Bothe's suggestion was to strike the last word, introduction, and put, printing. Mr. Case objected to that because then the bill could be passed on the first day of the session. If it had been printed in advance of the session, he says, and Mr. Scanlan suggests an amendment which accommodates both of those things, that the bill had laid on the desk of the members for at least three days.

MR. MILLER: There is one complication that we ought to consider, and that is the bill may be 25 pages long and only two or three words changed in the final amendment, but if you have to wait three days after it is all reprinted, if it is an important matter, it is very obnoxious. I think the members of each House could take care of it without too much in the Constitution.

THE CHAIRMAN: I don't think this would prevent

or require reprinting of a bill once it is introduced. I don't think the Committee had that in mind.

MR. MILLER: If the bill is printed, it has to be in the form it is finally passed.

THE CHAIRMAN: Not necessarily except as required by House rules.

MR. MILLER: Then it doesn't make a whole lot of difference because a member, and it has been used many times in the Federal Congress, by demanding the bill be printed before final passage, that is a terrible printing problem if it is a large bill.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: The wording here that I thought might dissipate some of this problem, No bill shall become a law unless it has been printed and lying upon the desk of the members for five calendar days prior to passage, except this provision may be suspended by unanimous consent.

MR. MILLER: Your unanimous consent will be awful hard to get.

DR. BARD: The model says three days.

MR. SAYRE: Maybe five days would be preferable unless it was suspended.

THE CHAIRMAN: But your requirement, as I followed you, that the bill be printed in final form would become almost unworkable in the last days of the session. Just hardly not possible.

MR. SAYRE: This is one of the problems of the last days.

MR. MILLER: If the Chair permits, if we put this in the Constitution, they can't suspend the rules. You can't alter the Constitution by suspending the rules, and we ought to be very careful on how we limit the Legislature in possible times of emergency.

MRS. BOTHE: I was just wondering if the Committee by the language it proposed, three days after introduction, intended to, it would be impossible to have a special one-day session of Legislature which acted on a particular bill.

MR. SCANLAN: I wasn't there, but if I had been there, I would have said, No, there should be language here which indicates this shall not be applicable

to any particular Section.

THE CHAIRMAN: Or permit the Legislature to waive the requirement by two-thirds or three-fifths.

MR. SCANLAN: That is right.

THE CHAIRMAN: Which does the Committee suggest?

DR. BARD: I would say waive it.

THE CHAIRMAN: All right, then, can we consider Section 17 as recommitted for addition of appropriate language providing for the waiver of the three-day calendar rule, for appropriate vote?

MR. CASE: What is the disposition on the introduction vis-a-vis printed controversy?

DR. BARD: Well, at present I would like to suggest that it be amended to read, No bill shall become a law unless it has been printed and upon the desk of the members at least three days prior to final passage. That would take care of what you have in mind and also what Mrs. Bothe has in mind.

MRS. BOTHE: What about the special?

DR. BARD: And then permit some statement in

regard permitting the Legislature to waive the requirement by two-thirds vote.

THE CHAIRMAN: Any further questions?

DR. BARD: That would take care of the one-day session.

MRS. BOTHE: I think that is what we intended.

THE CHAIRMAN: This is recommitted to the Committee to consider further. Any further comment?

MR. BOND: Dr. Bard left out the language, in final form.

DR. BARD: I left it out because I felt that could be confusing.

MR. BOND: Does this mean the bill can lie on the desk and be amended and be passed immediately?

THE CHAIRMAN: Yes. Any further question?

DR. BARD: When it is in final form?

THE CHAIRMAN: Section 18.

DR. BARD: The style of all laws of this State shall be, "Be it enacted by the General Assembly of Maryland": and the General Assembly shall enact no law except by bill; and every law enacted by the General

Asswmbly shall embrace but one subject, and that shall be described in its title; and no law, nor section of law, shall be revived, or amended by reference to its title, or section only; nor shall any law be construed by reason of its title, to grant powers, or confer rights which are not expressly contained in the body of the act; and it shall be the duty of the General Assembly, in amending any article, or section of the code of laws of this State, to enact the same, as the said article, or section would read when amended.

THE CHAIRMAN: Any questions? Any comment? I would like to ask a question. What is the purpose or the necessity for the second phrase, and the General Assembly shall enact no law except by bill?

MR. MINDEL: I think a question of resolution or bill.

THE CHAIRMAN: My question is, what difference does it make if they call it a resolution or bill?

MR. MILLER: A resolution can only be in one House. A joint resolution has to pass both.

THE CHAIRMAN: Yes, but you have here, a require-

ment must be passed by the Yeas and Nays in both Houses. What is added by this? I am just puzzled.

DR. BARD: It comes from the original Section 29.

THE CHAIRMAN: I know it does, but I don't know why.

DR. BARD: I think it could be strengthened probably.

MR. SCANLAN: I think there is some case law on this problem of resolution and bill in other States. We had it recently in Montgomery County, which is not a State; the County Council attempted to redistrict by resolution when they could no longer act under their legislative powers, and there was considerable discussion in the trial court as to what they had done and it was perfectly clear they had acted by resolution in the situation where they could only act by ordnance, and I don't have the research even in my head, but there are some problems about this in other States.

THE CHAIRMAN: Can I suggest, and I am thinking of our Report ultimately, to the Convention, that this

be considered by the Committee and perhaps a report --

MR. CLAGETT: I notice the word, original, has been omitted from in front of the word, bills, and that does change the sense of it, because where the Article, the Section 29 requires, shall be passed by a bill, and we put here,no law except by bill, we have enlarged the possibility here.

THE CHAIRMAN: Then, my question is: What is original bill?

MR. CLAGETT: One that hasn't been amended or previously been acted upon. I don't know exactly what other definitions may be, but those become a part of the ones.

THE CHAIRMAN: Well, I take it the Committee will report further on this. Mr. Gentry, you have a question?

MR. GENTRY: No, I thought, original bill, thought you couldn't enact a law without amendment to another bill.

MR. MILLER: I think the question of resolution has been very well defined, because a bill is a law

whereas a resolution may be something that would not go anywhere, and if you are looking through a record and want to know what the law of the land is, you look at bills, acts of the General Assembly, and not at resolutions.

THE CHAIRMAN: Any further comments or suggestions? If not, that concludes the consideration of the Fifth Report.

MR. BOND: I have one comment on one recommendation.

THE CHAIRMAN: Go ahead.

MR. BOND: The Committee recommended that Section 31 be eliminated, that is, no law passed by General Assembly shall take effect until the first day of June, next after the Session, at which it may be passed, unless it be otherwise expressly declared therein.

Under the Report as submitted, this means every bill that is passed by the Legislature must provide for effective date and I submit that this is a cumbersome procedure and maybe some of the people in the Legislature might speak to this, but I would think Section 31 that should be retained.

THE CHAIRMAN: I think as a matter of practice, it will be retained. I think as a matter of practice, at the present time, nearly every one contains the effective date.

MR. BOND: Thank you.

MR. CLAGETT: Mr. Chairman, I have one question. Is Section 33, we stopped at Section 31, is Section 33 going to be considered by the Legislative Committee?

DR. BARD: No.

MR. CLAGETT: Who is handling Section 33?

DR. WINSLOW: The Local Subdivisions.

THE CHAIRMAN: That is in your Committee.

MR. CLAGETT: I have a very serious point because we did consider and came to the conclusion it was not in our assignment.

THE CHAIRMAN: Well, I would say this, in light of your reports I have seen, I don't think the Legislative Department Committee ought to consider this subject matter until the Commission has considered your Report. It may be then that this will go back to the Legislative Committee, but at the moment, I think we would

have to have the Report of your Committee before us.

MR. CLAGETT: I also point out, maybe the Tax Section ought to consider this one, too.

THE CHAIRMAN: All right. We will hold it until after we hear your Committee's report. Any other comments as to any part of the Report? Then, if my scorekeeping is correct, we have approved tentatively all Sections as amended with the exception of Sections 5, 9, 11, 12, 13, 17 and 18, which are referred back to the Committee. In view of the lateness of the hour, I think we will have to abandon the plan for an 8:30 session and call tomorrow's session for 9 a.m.

(Whereupon the meeting adjourned at 11 p.m., August 21, 1966.)

CONSTITUTIONAL CONVENTION COMMISSION

Meeting of the Constitutional Convention Commission held on Monday, August 22, 1966, at 9 o'clock a.m., at the Adult Education Center, University of Maryland, College Park, Maryland.

PRESENT:

H. Vernon Eney, Esquire,
Chairman of the Commission
Honorable E. Dale Adkins, Jr., Member
Mrs. Elsbeth Levy Bothe, Member
Dr. Franklin L. Burdette, Member
Hal C. B. Clagett, Esquire, Member
Mrs. Maurice P. (Leah S.) Freedlander, Member
James O'Conor Gentry, Esquire, Member
Stanford Hoff, Esquire, Member
Dr. Martin D. Jenkins, Member
Honorable William Preston Lane, Jr., Member
Robert J. Martineau, Esquire, Member
Edward T. Miller, Esquire, Member
Charles Mindel, Esquire, Member
Mr. E. Phillip Sayre, Member
Alfred L. Scanlan, Esquire, Member
Walter R. Haile, Esquire, Member
Calhoun Bond, Esquire, Member

Reported by:
C. J. Hunt
and
N. Swetland

ALSO PRESENT:

John C. Brooks, Esquire, Executive Director
Professor Lewis D. Asper, Reporter for
Committee on Elective Franchise and
Declaration Rights
Dr. Clinton Ivan Winslow, Consultant
Mr. Lawrence W. Rodowsky, Reporter

THE CHAIRMAN: I think we might as well start. Mr. Gentry, will you take up the Article on Declaration of Rights, beginning with 64?

MR. GENTRY: 64 as proposed, really sets forth three statements: Process, Equal Protection and Private Property.

These cover the Fifth and Fourteenth Amendments to the United States Constitution and tie them in with the present Maryland Declaration of Rights. We would refer you to Articles 19, 20, 23, 24, and some of 32. Article 19 of the Maryland Declaration of Rights provides a statement which sounds very nice but just is not true: Every man for an injury done to him ought to have a remedy by course of the law of the land. That may sound pretty in speeches, but it is not susceptible of any determination or any action that might be brought.

It is not the preservation of any right that is enforceable.

Article 20 is a mere statement, not a right at all, trial of facts where necessity arises is one of the greatest securities of lives, liberties and estates of people. That is not a statement of a right. In the judgment of the Committee, it has no place in the Bill of Rights. Article 23, which is a statement of due process in effect, but it falls short, we feel, of the United States due process clause which we have used. Article 24, slavery shall not be re-established in the State, is a statement which we feel is unnecessary in this day and age.

We would recommend Section 4 as proposed here because it is a simple, clear, concise language. While it is true it does not have the overtones of the high-sounding phrases of the Declaration of Rights which was written many years ago, we feel it accomplishes more and is more susceptible to enforcement.

THE CHAIRMAN: Any questions?

MR. MARTINEAU: Mr. Gentry, you are leaving

out the very important claim for compensation for the slaves.

PROFESSOR ASPER: There is a comment on that in the second part of it.

MR. HAILE: Mr. Chairman, I think the notes under this, the record should show that this is also replacing Section 40 of Article 3 of the Constitution, and Section 40(a), 40(b), and 40(c), which were amendments to Section 40. The record should show that they are being dropped from the Constitution by adoption of this section of the Bill of Rights.

THE CHAIRMAN: Was this considered by the Committee?

MR. GENTRY: Yes, sir.

MR. HAILE: So prior entry rights of the State Roads Commission will have to depend on legislation rather than on the constitutional amendment.

MR. GENTRY: We feel it should.

MR. HAILE: That is all right. I felt it should be in the record. It affects so many people. It affects Baltimore and Montgomery County and the Washington

Suburban Sanitary Commission.

PROFESSOR ASPER: There are a number of things which were found in the present Bill of Rights which are also repeated in this section of the Constitution. The eminent domain provision was not in the Declaration of Rights. As I remember, it is not presently in the Declaration of Rights of the Maryland Constitution. We thought it should be elevated. I don't think this whereas, later on, the habeas corpus provision, we suggested that be placed in the Declaration of Rights and not in the Article on the Legislature. I don't think this necessarily would have to be true here, if the Commission feels that a more detailed statement of what the State Roads Commission can do to acquire land. The mere fact that we have included this here, I don't think would necessarily preclude a more detailed statement in the Article on the Legislature, if the Commission thought that was necessary or advisable.

THE CHAIRMAN: Are you talking about the question of eminent domain?

PROFESSOR ASPER: Yes.

THE CHAIRMAN: You wouldn't want it both places, would you?

PROFESSOR ASPER: I feel this way, that we thought that it belonged here in Section 4, but we would hate to include in the Declaration of Rights all the materials presently found in the legislative article, with specific reference to the State Roads Commission and things of that character.

THE CHAIRMAN: That is why I had asked Mr. Gentry the question I did whether the Committee intended this provision in Section 4 to supersede Section 40, for instance, of Article 3. I take it you are expressing some reservations about this.

MR. GENTRY: I didn't understand it in that sense. Our last sentence here really was not in the first drafts and came out of an effort to stick as far as possible with the United States Bill of Rights language, and of course, that sentence verbatim is a copy of that. It is just that we feel that that is all that is warranted in a bill of rights, and if any more detailed expression is to be found, it should be somewhere else,

but not here, certainly.

THE CHAIRMAN: Was the matter discussed at all with the Committee on Legislative Department?

MR. GENTRY: No.

THE CHAIRMAN: Dr. Jenkins?

DR. JENKINS: At a previous meeting of the Commission, I had stated that I thought that the State Constitution in Maryland should have a strong provision for protecting the rights of people, rights not be denied because of religion, race or color, and I was particularly speaking of race or color.

THE CHAIRMAN: Dr. Jenkins, may I interrupt you a moment? I thought you were going to speak on this matter of domain. Do you mind if we leave this a moment because I don't want to leave that hanging? It seems to me this ought not be lost sight of, and therefore, I will ask Mr. Brooks to advise Dr. Bard, who can't be here this morning, and it was suggested Dr. Bard and Mr. Gentry consult about this and either report back to the Commission the definite recommendation that it be excluded from Article 3 of the Constitution or not excluded. Can we

do that?

MR. SCANLAN: I recall, and maybe you can correct me, that the provisions of 40, 40(a), (b), and (c) of the Article they were discussing in our Committee, and those were among the provisions that we agreed should be eliminated as unnecessary and cluttering up the Article, with a simple statement, expressing the right of eminent domain in the Legislature would be sufficient.

MR. BROOKS: That is right. This was deferred to the Declaration of Rights to make the recommendation they are today making. Originally, this was assigned to three different committees, and in order to prevent duplication, we resolved it by simply referring it all to them to put in such a provision on eminent domain.

THE CHAIRMAN: The Committee on Legislative Department, as I recall it, makes no mention of this in its report. This Committee makes no mention of these sections, and I think we ought to pick it up one way or another.

MR. SCANLAN: I thought in one of our reports it was included in a section recommended for omission.

I could be wrong.

MR. MILLER: I don't think we ever planned to put it in. I think we felt it belonged somewhere else.

MR. SCANLAN: Isn't it a fact that Sections 40, 40(a), and the others, (b) and (c), of Article 3, were required because of the omission on the original Constitution, in the Declaration of Rights or elsewhere, to provide for a specific grant of the power of eminent domain, such as now recommended by the Committee on Declaration of Rights?

THE CHAIRMAN: I am not suggesting that we necessarily must have the equipment of 40, 40(a), (b), and (c), nor is Mr. Haile. All I am saying is, I don't want all of the reports to ignore the existence of those sections. It ought to be noted in one or the other of the reports. Dr. Winslow?

DR. WINSLOW: Mr. Chairman, as I recall, the Legislative Department Committee, there are still sections in Article 3 which the Committee have not considered as to whether they want to eliminate them or not. I do not look upon the report of last night as a final report of

that Committee.

THE CHAIRMAN: That is correct. Dr. Jenkins?

DR. JENKINS: At a previous meeting of the Commission, I expressed a view that there should be a constitutional provision in the State Constitution protecting the rights of people, at least in the area of religion, race or color, but particularly race or color. I had suggested, according to this, that no person shall be discriminated against because of religion, race or color. I believe the Constitution should have a strong provision covering the issues of this most important, most serious of our domestic problems in this country, covering such things as housing, employment, education. I realize, though, the difficulties involved in wording such a resolution, such a provision, and also realize from the attitudes in Maryland about open housing, for example, that it would be very difficult to include this concept.

I do think, though, the Bill of Rights should have something about the protection of the law as an indication of the feeling of the people of this State

that this is an important problem which should be given recognition. I move, consequently, that this section be referred back to the Committee, with instructions to include the wording of the Section 20 of the Connecticut Constitution, which appears on Page 9, or a similar expression.

The Committee discussed, or has considered this and rejected this provision or a similar one for two reasons, that it is redundant. I think it is no more redundant than some of theother aspects of the Bill of Rights which are covered by the Federal Constitution. You may say that there is nothing here that isn't covered by the Federal Constitution, but nevertheless, I think we should have it in our Constitution.

I am not impressed by the argument that the terms used are indefinite in meaning and indeterminate in scope. I think civil rights -- the two indefinite terms alleged to be indefinite are civil rights and political rights, and I think those are certainly clear enough to be definitive, and so that is my motion.

THE CHAIRMAN: Is there a second?

MRS. BOTHE: I will second it.

THE CHAIRMAN: Any discussion?

MR. SAYRE: I am persuaded by the precision of the original wording as it is here suggested, and I get back to the introductory statement to this whole Declaration of Rights, that we ought to confine ourselves to that which is precise, and I think I recall a part of Disraeli, quoting Gladstone, and his main opposition to Disraeli's speech was that this is terrible, it is taking out the beauty and flower of our speeches and adding statistics, adding dull material to guide our emotions with, and it would seem to me that we want to have as much precise precision without having unnecessary redundancy. It is just a matter of principle here, and I think we should guide ourselves accordingly.

MR. GENTRY: The problems you get into are alluded to in the report. For instance, the Connecticut language which relates to civil and political rights, prohibits discrimination in that area, leaves in the air just what are these civil and political rights. Do they mean as we talked about yesterday, civil rights meaning

property rights, or do they mean voting rights? Do they include housing? I don't know that housing has ever been given any determination as being civil rights. How would it be enforceable if you included housing? Would it include the right to open occupancy, as is now being suggested by the various laws proposed on that subject? You just open a door to problems, to litigation, which I don't think would be fruitful in the long run. The United States Constitution has no such provision. The United States Constitution under equal protection laws has been given all the scope and all the general, broad base enforcement in the various areas in which Dr. Jenkins is asking. I just feel that we should stick with the equal protection which has been found to be, to have some meaning, some real meaning.

THE CHAIRMAN: Any further discussion? Mrs. Bothe?

MRS. BOTHE: I would like to point out that the present Constitution is replete with references to segregation and voting of white male citizens, which we discussed last night, et cetera. All of these things

are federally unconstitutional and have a practical problem, but in writing a constitution for 1967, I wonder, and I am not altogether certain in my own mind, how long it is going to be before it is an anachronism to find it necessary to put these kind of phrases in constitutions. I am afraid it is a long time and because of it, I think perhaps this Commission ought to give some recognition, perhaps not in the words of the Connecticut Constitution, or the ones Dr. Jenkins submitted earlier to the Commission, but I wonder whether the Commission shouldn't give in the Constitution in the Declaration of Rights a certain place for it, some recognition of the fact that our Constitution will not tolerate discrimination, at least as enforced by the State.

DR. JENKINS: Mr. Chairman, as to that, I regret that I can't follow Mr. Case's principle and find rolling phrases covering this in the 1867 Constitution.

THE CHAIRMAN: Mr. Bond?

MR. BOND: I would like to echo to a degree what Mrs. Bothe said. I think when you talk about the word segregation in the Connecticut Constitution, I

don't understand -- be subject to segregation in the exercise of civil or political rights -- I would much prefer to have Dr. Jenkins' own simple language which he proposed at the last meeting, persons discriminated against because of race, religion or color. That, I understand. I don't understand the Connecticut language.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: I rather like the Connecticut Constitution language. I am not impressed with the argument it is not definite. There never was a constitution written or can be written with definition. You are writing guidelines for a long period of time. That argument has been used many times here in this debate. It leaves me a little cold. If you tried to write the Constitution of the United States in precise language, you would never have the document we have. You have to allow flexibility. I like this language better than the proposal of Dr. Jenkins, because it is somewhat more precise. I don't think there is much problem about this language, and I think in view of the current scene -- I realize you don't usually state constitutional principles

in order to accommodate the current market place, but I do think that a statement of this kind should be in this document, in this context in history; and therefore, I would support his motion to include the Connecticut language.

THE CHAIRMAN: Professor Asper?

PROFESSOR ASPER: Let me just say one thing in response to Mrs. Bothe. Not only do you have in the present Maryland Declaration of Rights references to the voting of the white male citizens, et cetera, but you have the absence of an equal protection clause. There is no equal protection clause in the present Declaration of Rights. I just want to make sure we are understood. The reason we say this provision is redundant is not because it is already covered by the Federal Constitution, but because we have now proposed an equal protection clause for the Declaration of Rights, and of course, I don't think certainly the provision quoted from the Connecticut Constitution says anything more than would be entitled to equal protection under laws. I don't think it says anything more. I don't know. We tried to write the most

precise document we could, and it has been expanded in a lot of directions. A person could have much less objection to expanding in this direction than some of the directions we took last night.

MR. SCANLAN: Dr. Jenkins, or someone supporting the point of view that we ought to be more specific in this area, can any of you anticipate a situation where a court would find that a person had not been denied equal protection of the laws, whereas if they had the language that you suggest they would have found that he had been subject to segregation or discrimination in the exercise of civil rights because of his color or national origin?

DR. JENKINS: I don't know. It is a hypothetical situation. I don't think I could answer what the court might say.

MR. SCANLAN: Do you really feel that this adds a substantive protection, constitutional protection?

MRS. BOTHE: I am a lawyer, I would comment on that. I don't think that there would be any distinction, and I didn't advocate adoption of this language, because

I thought there would be. I think it is one of the places in the Constitution where in 1967 we ought to give recognition to the changes that have occurred in the past hundred years, and I don't think adopting the Federal language under which a lot of these changes occurred is sufficient, in view of the fact that our Constitution contains, the present one, contains so many allusions in the other direction. I think it is a gesture we should make. That is all I think it is. From a legal standpoint, I can't see that it will change the case law or have any practical effect, above the equal protection law.

THE CHAIRMAN: Mr. Martineau?

MR. MARTINEAU: I would like to find out if the proponents of this Connecticut section, whether anyone who has any knowledge of the Connecticut section, has any idea of whether civil or political rights encompasses private action in any way. I think this statement might be more appropriate if somehow you were discussing discrimination by any agency of the State or discrimination by some aspect of the State Government. What would

bother me a little bit would be whether civil or political rights would somehow get into the question of private action, which I don't think anyone here is arguing should be included in any ban such as this.

JUDGE ADKINS: Would that question be answered if the word civil were stricken out and it were to read, Discrimination in exercise of political rights. Leave out the words, civil or.

MR. MARTINEAU: I am not sure that is broad enough.

THE CHAIRMAN: I think the difficulty comes in by reason of the fact that if you use Connecticut language, you would, in effect, be saying no person shall be subjected to segregation or discrimination, without saying subjected by law. In other words, it would appear to be irrespective of law, and therefore to embrace private action.

MR. MARTINEAU: I would say it should be, No person shall be subjected to segregation or discrimination by the State, or by the State agency, to make it clear that is what we are talking about. I think if you

stated it that way, you wouldn't even need the references to civil or political rights. It is just that no one shall be subject to discrimination by the State, period. I would think that would be a better way to put it.

THE CHAIRMAN: May I ask Dr. Jenkins a question? Dr. Jenkins, would the purposes that you seek to accomplish be served if you added to the first sentence the phrase, Because of religion, race, color, ancestry or national origin, so that the second clause would then read, Nor shall any person be denied the equal protection of the laws because of religion, race, color, ancestry or national origin?

DR. JENKINS: I would prefer this statement. I would yield to that.

MR. SCANLAN: I would object to it on the grounds you would be contracting the protection in other areas.

THE CHAIRMAN: I am just trying to clarify his point for the moment. I am well aware of that. It seems to me that the Connecticut language embraces two

distinct ideas, and I am trying to find out which of the two, or maybe both, you want to accomplish in your motion.

DR. JENKINS: I would like to accomplish both of them. I would like to accomplish, or go as far as this Commission is willing to go on this matter.

MR. SAYRE: In what?

MR. BOND: Does this extend to private contract rights?

THE CHAIRMAN: If you are asking me for an opinion --

MR. BOND: I am asking Dr. Jenkins.

THE CHAIRMAN: I think Dr. Jenkins' statement is clear. He would like to go as far as this Commission is willing to go, including impinging on private rights. Isn't that correct, Dr. Jenkins?

DR. JENKINS: That is correct.

THE CHAIRMAN: Yes. I think he has made is position very clear.

I would suggest, and I don't want to take up time and debate with my discussion, that the point made

by Mr. Scanlan is certainly valid, that the phrase, Nor shall any person be denied the equal protection of the laws, is certainly broader than the phrase, Nor shall any person be denied the equal protection of the laws because of religion, color, race, ancestry or national origin, and suggest to you that if you want those words so that they are highlighted in the Declaration, then you ought to add to them some phrase such as, Or for any other reason, so that you would not narrow the broad sweep of the equal protection clause as written.

MR. MINDEL: Mr. Chairman, couldn't this be covered in the Preamble? Wouldn't that satisfy you, Dr. Jenkins, if an appropriate statement were made in the Preamble, rather than this Section, which is so broad?

DR. JENKINS: I think not. I feel very strongly that this is a changing concept in this democracy of ours. It is not one that characterizes our society. We had, prior to 1867, a statement, where people on account of race were thought of as chattels. The last hundred years we have given grudging consideration to the rights of people on the basis of race and now, and because

of our world leadership, and perhaps, too, because of conscience, we are saying that race and color should not be a determining factor in the rights of people, and I think this Constitution should set that forth. I am not a lawyer, and yet I have presented this particular view.

MR. HAILE: If you inserted the words, By law, after the words, No person shall, by law, be discriminated against, as we did in the previous section where we said, No person shall by any law be molested, et cetera, on account of his religion, I have an open mind on this; but I would like to know whether you think that if we insert, By law --

DR. JENKINS: I would agree to that insertion.

MR. HAILE: I would be willing to vote for it.

MR. SCANLAN: I had a similar thing in mind, add, Nor be subject by law, be subject by it, since you already had law once in the sentence, it would make it clear it would be on the same basis as equal protection. It would have to be official action of the State we are talking about.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: What you are suggesting by law is in addition to the existing language?

MR. HAILE: No person shall by law be discriminated against because of religion, race or color.

MR. SAYRE: Are we keeping the, No person shall be deprived of life, property, et cetera?

MR. HAILE: Yes.

MR. SAYRE: The question I have then, Dr. Jenkins, you are concerned about the broad coverage more than the ingredients of the language like race, color. If you can have some encompassing statement that includes that, is it necessary to include race, color, creed, ancestry, et cetera?

DR. JENKINS: Yes.

MR. SAYRE: Because of what?

DR. JENKINS: Are you suggesting we might eliminate, Because of race, color, creed?

MR. SAYRE: If you have language that encompasses it by its very nature, why would you have to include these specifics, when I think that actually

lessens its scope? I am just asking, if we achieve the effect of what you want.

DR. JENKINS: I thought I tried to make that clear. Granted, that in general terms, this might be covered by the due process, the equal protection statement here originally presented in Section 4. I tried to make it clear that I think that it is important because of our history and because of social conditions that the specific statement appear in the Constitution.

MR. HAILE: Just as the religion statement appears?

THE CHAIRMAN: Mr. Haile, so that we know precisely what we are talking about, would you state the language that you suggested that I think Dr. Jenkins accepted?

MR. HAILE: No person shall --

THE CHAIRMAN: Insert where?

MR. HAILE: Right in the middle of Section 4, after the first sentence.

THE CHAIRMAN: After the word, laws?

MR. HAILE: Yes, after the word, laws.

THE CHAIRMAN: Strike the period?

MR. HAILE: No, just put period, and then a sentence, insert the sentence, No person shall by law be discriminated against because of religion, race or color.

THE CHAIRMAN: Where?

MR. HAILE: No person shall by law be discriminated against because of religion, race or color.

DR. JENKINS: As a matter of fact, the first clause could be deleted since it is in the original statement. Then that would read, No person shall by law be subjected to segregation or discrimination.

THE CHAIRMAN: I am confused. Let me get Mr. Haile's language, and we will find out if it is suitable. No person shall by law be discriminated against because of --

MR. HAILE: -- religion, race or color. That sentence should be inserted between the two sentences now contained in Section 4.

THE CHAIRMAN: Dr. Jenkins, is that acceptable to you?

DR. JENKINS: Yes, in this context.

MR. SCANLAN: Would you accept the further amendment? I still like answers to your national origin. People have been discriminated against. Our Spanish-American friends in Southern Californis wouldn't find much protection to Mr. Haile's amendment.

MR. HAILE: I accept that.

THE CHAIRMAN: Now, Dr. Jenkins, the amendment which you have accepted, I take it, is after the first sentence of Section 4 and before the second sentence insert, No person shall by law be discriminated against because of religion, race, color, ancestry or national origin.

DR. JENKINS: Yes.

MR. GENTRY: Mr. Chairman, do you want to add sex to this?

MR. SCANLAN: Would you clarify that a little bit?

MR. CLAGETT: Mr. Chairman, if we vote on this, will we get a chance to vote on the simple language of Section 4 without the addition?

THE CHAIRMAN: I take it that if you prefer the

language of Section 4 without the addition, you would vote against the amendment which makes the addition.

MR. CLAGETT: I think that clarifies it.

DR. BURDETTE: I would like to ask the lawyers present whether they consider that the insertion of this sentence in any way seems to describe and limit, Nor shall any person be denied the equal protection of the law. For example, could that enumeration be construed to permit some denial of equal protection on the basis of age, being dealt with now enormously in the press? I would hope that there will come a day in our country that we would feel that with the putting on the shelf of people because they happen to reach a numerical age, and I think there are others, I think the whole sex problem is a very serious one, but what I am really asking is the judgment of lawyers as to whether or not this, as Alexander Hamilton said, this enumeration would have an effect of limiting the pressure which could be brought by an aroused citizenry in protest against any denial of equal protection of laws of any citizen for any cause whatever.

THE CHAIRMAN: Dr. Burdette, I think if you put that question to the lawyers here, you would not have unanimity of opinion. I think the only thing that you would have unanimity of opinion on is that some lawyer would raise the question, at some point.

DR. BURDETTE: I am saying I don't want to limit it. While I think in many circumstances rights come out of pressure and demand, still I don't want to see any constitutional clause which limits and reduces the power of that demand.

THE CHAIRMAN: Any further discussion?

MR. CLAGETT: Whereas I have great sympathy for the desire for specification which would be accomplished by the insertion, as suggested by Mr. Haile, and I am certainly sympathetic with the ambitions and aspirations of all who may fall within that clause, I think it is unnecessarily redundant. It doesn't really add anything. It tends to distract or to read here, go from the real impact and clear mandate that is found in the preceding sentences, and unnecessarily clutters in a way consistent with today as we were protesting against

the elimination of language from yesterday, and consequently, I would oppose the insertion.

MRS. BOTHE: I would like to point out that I think the inclusion of this language might have some practical aspect. There still exists on the statute books a number of unrepealed statutes involving or requiring segregation; for instance, the one which makes it a crime for interracial marriage has never been taken off the books. I think a section like this in the new Constitution, if passed by the Convention and the people, would automatically result in an official declaration that all such parts of our law are unconstitutional. Otherwise, the matter is going to stand in limbo. I think it is unconstitutional, but the courts haven't thrown it out officially, and the Legislature has refused to throw it out, all these little tag ends that exist in the Annotated Code of Maryland, so I feel that it would have that much of an effect. It would be a repealer of anything on the statute books of the State which required or enforced segregation or discrimination because of race, creed or color.

THE CHAIRMAN: Any further discussion?

MR. MILLER: Mr. Chairman, I perhaps am going to vote for Dr. Jenkins' thoughts on it, because I am in full sympathy with highlighting this. Personally, I am a member, I am really a minority group member. I have been a lifelong Quaker, and I don't think there are over 200,000 of us in the entire United States.

DR. JENKINS: I thought you were going to say Republican.

MR. MILLER: That is a minority group, but a little bigger. The thought occurs to me that in answering some of the questions about its legal effect, I can see an incident, a possible incident, where two employees of the Government are discharged for alleged incompetence and if one of them is a member of a minority group, either religious, race, color, whatnot, if we have anything like that, that particular individual would have more teeth in a claim that he was being discriminated than a white Protestant, for instance, and I don't believe we are adding to the thing. However, if it will salve the public conscience, it is not anything that I

am drastically opposed to, but I do think it weakens it.

MR. MINDEL: Mr. Chairman, some members seem to have concern about the restriction that would be placed on the broad power. Would it be possible to include that with some brief statement, say, without limitation, or something to that effect so there wouldn't be any misinterpretation, that the restrictive clause would then govern over the general clause? Whether it is going to get too verbose, I don't know, but we might be able to include that in answer to Mr. Clagett's statement.

THE CHAIRMAN: If your question is directed to me, I would say that I would find it very difficult to do that, and I think it would cause more trouble than it would solve. Somebody may have a better idea.

MR. MINDEL: What concerns me, you can't discriminate, except for those two or three instances, and somebody might include you could discriminate in other ways.

THE CHAIRMAN: I think this is inherent in the nature of it, that age, sex, other variables are omitted. Professor Burdette?

DR. BURDETTE: This was really my question. I had wondered if one could work out language including but not limited to.

THE CHAIRMAN: One could, but I don't know that it would hurt matters. Mr. Bond?

MR. BOND: Upon hearing this debate, I can't help but feel that the original language, which is stronger and does more what Dr. Jenkins wants than the language proposed, and I can't help but recall the discussion yesterday on the free exercise of religion where this Commission gave free exercise and left out any restrictive language as to abuse of exercise, that would infringe on others, et cetera. It seems to me that the Commission leaving that language out perhaps did the right thing, because they left it up to events as they occur and the good order of the State, and there was no limiting language. Here I really feel that the language proposed is editorially good. It certainly is good as far as speaking with the times. Certainly, none of us wants to discriminate because of race, creed or color, but I feel the original language goes further to embody the broad

principle.

MR. CLAGETT: I would like to pick up at that point and add this. I do comepletely agree with what Mr. Bond has said, and what he has said is what I tried to say a few moments ago. I want to add this thought. I think the time has come when the conscience has been stirred to the extent that we recognize that any abuses by reason of discrimination on account of race, color or ancestry or national origin, but to continuously hop upon those factors now is creating an adverse reaction, and I think that as we write this constitutional article here, we have got to anticipate that by raising the flag once again, we are continuing to wave a red flag in front of the bull, and we might as well recognize that we are hurting and retarding the advance of appreciation of the actual impact of equal protection being extended to everybody and avoid that, as well as by the use of those words, delude ourselves that we are advancing.

THE CHAIRMAN: Any further discussion? Before we take the vote, I would like to take a moment to state my own position. I think there is a great deal of force

in what Dr. Jenkins says, that in the light of recent historical developments and social change, that it is pertinent to take cognizance of the fact that we are affirming the right of all people to be free of discrimination by State action or Federal action.

My difficulty lies in the fact that the first sentence to me seems to be so completely sweeping and broad in scope and all-encompassing that I think it not only accomplishes the purpose that all of us want to accomplish, but does it better because it does it simply and does it quite emphatically.

I can think of other statuses that could cause discrimination that we want to prevent just as much as the things mentioned, sex, age, social status, education, any number of variables. I think that the Committee in the simple language of the first sentence has made a sweeping affirmation of the principle that is stated there -- No person shall be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of laws.

Is there any further discussion?

DR. JENKINS: Yes. Mr. Chairman, I certainly respect the judgment of the persons who may oppose this statement, but I think your statement misses the point entirely of what I am trying to accomplish here. Of course, people are discriminated against because they are blonde, because they are Quakers, because they are Republicans, but this is the number one problem facing our nation, and this is where this country and this State must make, in my opinion, an affirmative statement and not hide behind, and I am not using that in any derogatory sense, I assure you, the generalized statement.

I am not a lawyer. It is difficult for me to see that this addition limits the general principle. I am wondering if this would meet that objection, that no person shall be deprived of liberty or property without due process of law, nor shall any person be subjected by law to segregation or discrimination because of religion, race, color, ancestry or national origin, or in any other measure be deprived of the equal protection of the laws. I wanted to add one other thing. I was afraid and pretty sure that the matter of adverse public opinion might be

brought up. I am certain that some proportion of the electorate would object to this, but as in other areas, I think we have to do on the matter of broad principle what we think should be done.

THE CHAIRMAN: I don't think there is the slightest question about that, Dr. Jenkins, and I think if you put that proposition to the vote of this Commission, it would pass unanimously. Judge Adkins?

JUDGE ADKINS: In answer to your comment, Mr. Chairman, it seems to me that the best answer to your suggestion is the fact that the language which is proposed by the Committee is by no means new language. It has been inherent basically in the Federal Constitution since the Federal Constitution was first drafted, and yet it did not do the job that it was intended to do; at least, for 150 years, it didn't do the job. Having failed to do the job there in terms of the broad sweeping language, there is no reason to presuppose it will do the job here, except by virtue of the change in the political and social climate. That being true, it seems to me not unreasonable to recognize the change in the political and

social climate by being somewhat more specific than the general language which you propose. What I am trying to say is that the Committee's language is basically the language of the Constitution of the United States, and yet discrimination did exist for 150 years under that very broad language, so it doesn't seem to me that the argument that the breadth of the language is all-encompassing is necessarily an answer to Dr. Jenkins' question. For that reason, while I think a lot of arguments, logical arguments, semantic arguments can be made by the inclusion of specifics in relation to the general, I think that he is quite right in insisting that some reference to this problem be made in this document.

DR. BURDETTE: Couldn't we have the language of Dr. Jenkins again? As I heard it --

THE CHAIRMAN: Which, the motion or his last suggestion?

DR. BURDETTE: The last one. I would like to write it down if I could. As I got it orally, I thought the last clause of it was redundant.

DR. JENKINS: Nor shall any person -- this picks this up -- Nor shall any person be subjected by law to segregation or discrimination because of religion, race, color, ancestry or national origin, or in any other measure be deprived of the equal protection of the law.

DR. BURDETTE: I am not sure about that last part of it, but I am going to be persuaded that if you put it in that way, Mr. Chairman, in the language which I referred to, not weakening the existing equal protection of the law but expanding it somewhat by spelling it out and without limiting it, and I am going to be persuaded by it.

DR. JENKINS: Or in any other manner. I am sorry; I said, measure.

THE CHAIRMAN: Dr. Jenkins, could we have that once again, Nor shall any person be subjected by law to segregation and discrimination because of religion, race, color, national ancestry, and then?

DR. JENKINS: Or in any other manner be deprived of the equal protection of the law.

MR. MILLER: Would you go along with, Any other

reason, instead of manner?

MR. HAILE: Would you strike out the word, other, and say, Or in any manner, nor in any manner be deprived of the equal protection under law?

DR. JENKINS: I would leave that to the lawyers.

MR. SCANLAN: I would hate to see the great equal protection question come last.

MR. CLAGETT: It is repetition.

THE CHAIRMAN: We are not getting a record. Judge Adkins?

JUDGE ADKINS: I simply want to say, if you broaden it beyond what we have done, you open a lot of doors. For example, would this mean that a person over 65 could not be given two tax exemptions, as now is in the law? I think a very strong argument could be made it would be unconstitutional to provide a person over 65 would be entitled to 1200 instead of 600. I think it would also be in conflict with the provision that a person who has been convicted of a crime can't vote. I think there are lots of areas, if you make it that sweeping, that you open Pandora's box. If you limit it to the original

proposal, you have got a precise, relatively definable situation. I would hope that Dr. Jenkins would not insist on that.

DR. JENKINS: That impresses me. I will withdraw this amendment.

DR. BURDETTE: What doyou mean, original proposal?

THE CHAIRMAN: The motion before us.

MRS. BOTHE: Could we hear it again?

THE CHAIRMAN: The motion before you is to insert a sentence between the present two sentences of Section 4, reading, No person shall by law be discriminated against because of religion, race, color, ancestry or national origin.

DR. BURDETTE: What does equal protection of law mean?

MRS. BOTHE: The same thing.

MR. SCANLAN: Only more.

THE CHAIRMAN: I think we are going to repeat all of the discussion. Let's not do that. Any further discussion of the motion? Are you ready for the question?

MR. GENTRY: Question.

THE CHAIRMAN: The question arises on the motion to add the following sentence between the present two sentences of Section 4: No person shall by law be discriminated against because of religion, race, color, ancestry or national origin.

Those in favor, signify by a show of hands. Opposed. The motion is carried, 8 to 6.

MR. SCANLAN: Very frankly, I found that the most difficult vote I have cast at this Commission. My head was with you, Mr. Eney, in your arguments, but my heart was with Dr. Jenkins, and I followed St. Paul's admonition that the letter killeth, but the spirit giveth life.

MR. CLAGETT: Mr. Chairman, I would like my vote against that recorded, please.

MRS. BOTHE: Could I raise another question on Section 4?

THE CHAIRMAN: Mrs. Bothe?

MRS. BOTHE: I sort of raise it as a devil's advocate, because I notice the commentary makes no reference

to the model State Constitution provisions on electronic interceptions and wiretapping as being prohibited under the Declaration of Rights. At this point I am not saying that I advocate its inclusion, but apparently it is an important consideration because without it, as I read the commentary in the model Constitution, there would be on constitutional protection either federally or State against undue invasions of privacy through the use of electronic devices. I think it is something that any Constitutional Convention Commission should consider one way or the other. Has the Committee given it any thought, and if so, what is its comments?

PROFESSOR ASPER: I think our comment right at this point is that although we considered it, we considered it in connection with Section 6, the search and seizure problem, instead of 4.

MRS. BOTHE: I know the model State Constitution considers it as part of the due process clause. I will reserve my question until then.

THE CHAIRMAN: All right. Any further question on Section 4? If not, we will move to a consideration

of Section 5.

MR. GENTRY: No bills of attainder, or ex post facto laws, or laws impairing the obligations of contracts shall be enacted; nor shall any conviction work corruption of blood or forfeiture of estate.

This embraces what is presently in our Declaration in Article 17, which relates to retrospective laws as well as ex post facto laws, and Article 18, which is the referral to acquit particular persons of treason or felony, that is the bills of attainder, and Article 27, which is a corruption of letter forfeiture of the State.

I think we haven't deleted anything of Article 18 or 27, and we have added No law shall be enacted which impairs obligations of contracts.

THE CHAIRMAN: Any question? Any discussion or comment?

JUDGE ADKINS: I have a question. The obvious intent of the ex post facto provision of Article 17 is to apply only to criminal laws. The reading of the language of Section 5 would seem to me, since it is coupled

with the obligations of contract to imply that ex post facto laws also apply in the civil field. That is to my recollection, a substantial broadening of the ex post facto concept. Is that intended?

PROFESSOR ASPER: No. We commented on that in the section on ex post facto, which as a term of art refers to criminal laws. Retrospective law is a broader term, and of course, both are used in Article 17. However, the Maryland Court of Appeals has said on a number of occasions, most recently in the revenue case, that the purport of Article 17 is ex post facto relating only to criminal statutes. They have on occasion, as we point out in Elliott versus Elliott, been disturbed about retrospective laws affecting, and here again the civil rights, non-criminal rights, et cetera, and have protected them but using as the basis of their protection the Constitution of the United States, the inhibition of Constitution of the United States against contract laws, so we felt by using ex post facto, not retrospective, we have by using that phrase here confined this particular term to criminal laws with retroactive effect and to

relieve the Court of Appeals of the difficulties, also included language of the Federal Constitution.

JUDGE ADKINS: It is clear from your research that by using the term, ex post facto laws, without more, that it does apply only in the criminal field?

PROFESSOR ASPER: I am satisfied with that, yes.

THE CHAIRMAN: Any further questions? We will move on to Section 6.

MR. GENTRY: Section 6 is search and seizure, right of people to be secure in their persons, house papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

This is the language of the United States Fourth Amendment. It embraces as to our present Declaration of Rights Article 26, which says, All warrants without oath or affirmation to search respective places or seize any person or property are grievous and oppres-

sive. That is not a statement of a particular right but just a statement of principle, and it goes on, And all general warrants to search and inspect places or to apprehend suspected persons without naming or describing the places or the person are illegal and not to be granted. We feel that this is an area whereby adopting the Federal language we pick up all the body of law which has grown up around the United States Fourth Amendment and have its benefits of its interpretation by the Supreme Court over the years.

THE CHAIRMAN: Any question? Mrs. Bothe?

MRS. BOTHE: Before I raise the one I raised before, on this added phrase, to have the assistance of counsel, instead of merely the right to counsel --

PROFESSOR ASPER: That is not here.

MRS. BOTHE: I am always ahead. I will raise the wiretapping question at this point.

MR. SAYRE: A question --

THE CHAIRMAN: Mrs. Bothe has the floor.

MR. SAYRE: She is jumping to a new section?

THE CHAIRMAN: Not now.

MR. SAYRE: If we confine ourselves to the wording that is already here, isn't she going beyond?

THE CHAIRMAN: No, she is raising the question as to the omission from the wording here of some prohibition against wiretapping. I think she is in order.

MR. SAYRE: That is in addition.

THE CHAIRMAN: It may be, but I think she is in order.

MR. SAYRE: I would like to raise the point that my vote is not necessary any longer. Just say, By affirmation, period. Could I offer that as an amendment?

THE CHAIRMAN: All right. Do you want to comment on it, Mr. Gentry?

MR. GENTRY: Only to say just what was said, we haven't eliminated oath. It is, Oath or affirmation, which is not in the present Declaration.

THE CHAIRMAN: His suggestion is, you do eliminate the words.

MR. SAYRE: Affirmation is adequate, and therefore that is all you should require.

MR. GENTRY: Again, we felt there was a lot

of benefit in copying wherever possible the United States Article 4 language, and we verbatim copied it.

THE CHAIRMAN: Do you make motion?

MR. SAYRE: I move that we strike the word, oath or.

THE CHAIRMAN: Is there a second? It fails for lack of a second. Mrs. Bothe?

MRS. BOTHE: I won't repeat the question because I think it was heard before, which was to the Committee, as to whether or not it had considered the possibility of adding to the search and seizure section of the Declaration of Rights some protection against invasion of privacy by electronic devices, such as is proposed in the model State Constitution.

MR. GENTRY: I had thought that the seven or eight of us that met last night after midnight had settled that problem.

THE CHAIRMAN: Was there a rump session?

MR. SCANLAN: Apparently our own wires were tapped.

MRS. BOTHE: I was going to bring it up anyway.

DR. JENKINS: I think the rump session should share its conclusions with us.

MRS. BOTHE: We were all being very agreeable then.

MR. GENTRY: It was considered by the Committee. It was felt that the general law on search and seizures was sufficient for purposes intended by the wiretapping prohibition, and we felt that presently we now have wiretap restrictions, both Federal and State, and we feel that there is no likelihood of any diminution of those statutory limitations, and we just felt it was not a subject which warranted treatment in the Constitution.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I would like to move and discuss, The right of the people to be secure against interception of telephone, telegraph and other electronic means of communication and against interception of oral and other communications by electric or electronic methods, shall not be violated, and further, evidence obtained from violation of this Section shall not be admissible in any

court against any person.

THE CHAIRMAN: Is that moved as an addition to Section 6?

MR. SAYRE: I move that as an addition to this Section, so you will have (a), (b), and (c) if you count the first part as (a).

THE CHAIRMAN: Is there a second?

MRS. BOTHE: I will second.

MR. SAYRE: I think this is a compromise provision actually with respect to the privacy that I think we are all entitled. I know there is sentiment widespread that we should make any such violation of this privacy a crime, and I would not say that that is out of line, but his would be a compromise method, and I think that we do permit even though a qualified search and seizure process the tapping of your telephone or listening to an electronic device without your knowledge, if we do that, that this kind of power could be abused in another area in our country; that we should not allow it constitutionally to be permitted.

THE CHAIRMAN: Would you read the language

again a little more slowly?

MR. SAYRE: The right of the people to be secure against interception of telephone, telegraph and other electronic means of communication and against interception of oral and other communications by electric or electronic means shall not be violated. Then, the additional sentence, Evidence obtained in violation of this Section shall not be admissible in any court against any person.

MR. BOND: May I ask Mr. Sayre why he omitted the word, unreasonable, before the word, interception? The New York Constitution has the word, unreasonable, and the model has, unreasonable, in it. Why did you exclude it?

MR. SAYRE: The model had a great deal of difficulty and the model is a compromise of a compromise, and when you take the real middle ground, leaving out, reasonable, does permit, and I am saying you should not permit this at all and if you want to go to the other extreme, this would be a crime; so this is really a compromise as to protection of privacy.

MR. SCANLAN: I would point out, Mr. Eney, under Mr. Sayre's proposal, and assuming that the Committee's proposal stays in, the first part of it, it would permit a situation where you could ransack a man's house under a warrant to find out if he was violating a building code, but you couldn't get a warrant to tap a telephone in a hotel room where the Mafia was holed up. Is that the situation that would be permitted under your amendment? Under your amendment, you couldn't get a warrant for any kind of interception.

MR. SAYRE: That is correct.

MRS. BOTHE: I don't go along with that myself, having raised the subject.

THE CHAIRMAN: I am not sure it is clear what you don't go along with.

MRS. BOTHE: Mr. Sayre wants the Constitution to ban any kind of interception, with or without reasonable cause. Those who have the model, on Pages 30 and 31, this question is discussed, and it is pointed out that New York, I believe, is the only State that has such a provision, and it doesn't go anywhere near as far as

Mr. Sayre's proposal, but it is pointed out that without such provision it has been held that the search and seizure protections of the Fourth Amendment are not applicable to wiretapping as construed by the Supreme Court. We would have this area, therefore, open to invasion without any constitutional restriction. I would like to propose, I don't feel from what the Committee's comments have been that they seriously did consider it, or am I wrong?

MR. GENTRY: It was considered.

MRS. BOTHE: It wasn't mentioned in the commentary here.

PROFESSOR ASPER: That is my problem. Let me ask Mr. Sayre one question, if I may. Would you regard your sections there as a mandate to the Legislature to make private wiretapping a crime, because you don't indicate that this is by any agency of the Government?

MR. SAYRE: No, I don't make it a crime. I just say it shall not be violated. I am just saying that if you took the extreme position, it would be made a crime. In other words, this is not as strong as you could make it.

PROFESSOR ASPER: The second thing that occurs to me, and I suppose this is influencing my thinking, I wish I could remember the name of the case, but the thing that comes to my mind when I look at these provisions, the famous Supreme Court case against mailing obscene matter, which was described as papers, films, documents, pamphlets, everything, and it took them three tries, and three, five and four decisions to decide whether dirty records was covered by that statute. This is exactly the kind of question, kind of problem that we are asking for, I believe, in putting into a constitution here this detailed kind of proscription against a certain kind of search and seizure. I just can't believe --

MR. SAYRE: How does this provision differ from our present court limitations?

PROFESSOR ASPER: It doesn't differ at all. We are not trying to add anything here to what has already been decided. We don't happen to believe that the Supreme Court or certainly, the Court of Maryland, or the Maryland Legislature has locked itself in.

MR. SAYRE: I am suggesting here that in case

there is further changes on the part of the court decisions, that as long as it doesn't prevent our having this strong measure, I think we should have it.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, if I understand Mr. Sayre's suggestion, from a practical standpoint, wouldn't it hopelessly impede the protection of the community by police forces? They would have no way of legally doing things that the criminal element can and does do? Enemy agents couldn't be intercepted. If we were prevented from obtaining a warrant for probable cause, it seems to me almost a practical necessity in this modern age to not tie their hands. It is like putting in the Constitution that no policeman can carry a pistol.

DR. JENKINS: Mr. Sayre, the model code has this protection. I am wondering if you purposely left this out. It has, But upon probable cause supported by oath or affirmation that evidence of crime may be thus obtained.

MR. SAYRE: That was purposely left out. Let me put it this way: If we can't have this strong measure --

I realize anything in interstate crime, the hands of the law is bound somewhat, but right now under our present procedure, it is not legal to wiretap for evidence, and it would seem to me that if you are going to compromise, that would be the next step, to include what the model has. I think in any event, we do need a provision in this modern age on this protection of our privacy.

THE CHAIRMAN: Mrs. Bothe.

MRS. BOTHE: I wondered if Mr. Sayre might reconsider. Our present law does permit wiretapping under the circumstances outlined in the model Penal Code, where there is probable cause, oath and affirmation, and judicial determination. In fact, the suggestion of the model which, if we are going to adopt this at all, I think is the only reasonable approach, that wiretapping, et cetera, be put on the same basis as other searches and seizures. Apparently you can ransack the man's house with a warrant, but you don't even need one today to wire his house, except the statute may allow it. Those of us who read the papers in recent months notes an attention to this problem of search and seizure by device. The

attention is going to increase. Certainly, I feel that if we are going to, in fact the present methods of search and seizure are oldfashioned. I don't think they are going to have to invade people's houses much longer. They are going to end up being able to use some kind of remote device to invade their homes instead.

DR. JENKINS: Big brother.

MRS. BOTHE: A real big brother type of thing, and if we are writing a constitution for 1984, I think we have to consider this possibility quite as strongly as the oldfashioned knocking on the door and breaking it down and looting the papers and books.

PROFESSOR ASPER: What I am suggesting is, if we attempt to do even what the model does here, and if ten years from now somebody comes up with an interception device which is based on a laser beam rather than an electronic device, then we will have to have a constitutional amendment to correct that, whereas I think the ordinary search and seizure language here is appropriate to accomplish the purpose.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: More and more, the sentiment of the proponents seems to be swinging around to rewriting the statute virtually verbatim into the Constitution. I see no use for it. I think it would be the only area where we would attempt to codify in the Constitution. I just would be against the inclusion, and the Committee is against the inclusion of an express wiretap law in the Constitution as being too specific, not a broad-based principle which the rest of our Bill of Rights attempts to be.

THE CHAIRMAN: Mr. Bond?

MR. BOND: Well, the commentary of the model says flatly the Supreme Court says wiretapping is not included under the language proposed by the Committee.

THE CHAIRMAN: I can't hear you when you drop your voice.

MR. BOND: The model states, Umstead versus United States, the Supreme Court case, specifically says wiretapping is not included in the language proposed by the Committee.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: I would like to propose a simple amendment to Section 6, after the word, papers, to insert a comma, strike out the word, and after the word, effects, to insert the words, and oral communications.

THE CHAIRMAN: Mr. Sayre, would you accept that as an amendment?

MR. SAYRE: Let's see how that would work. The right of the people to be secure, persons, houses, papers, effects, and oral communications?

THE CHAIRMAN: What was after, papers?

JUDGE ADKINS: Papers, effects and oral communications.

MR. SAYRE: -- against unreasonable searches and seizures.

MRS. BOTHE: Add, interceptions, after seizures, as well?

JUDGE ADKINS: Yes.

THE CHAIRMAN: What is the language you are suggesting, Judge Adkins?

JUDGE ADKINS: The Section would then read, Right of the people to be secure in their persons, houses, papers, effects, and oral communications against

unreasonable searches, seizures and interceptions, shall not be violated, and no warrant shall issue but probable cause supported by oath or affirmation, et cetera.

THE CHAIRMAN: Do you accept the amendment, Mr. Sayre?

MR. SAYRE: Perhaps, oral, would be restrictive. What do you think, Judge?

MR. MILLER: Would not that --

THE CHAIRMAN: Wait just a second. I want to find out if he accepts it.

MR. SAYRE: I am getting back to the problem where probable cause is so hard to obtain.

THE CHAIRMAN: Don't debate it. Do you accept the amendment so we know what we are debating? If not, the discussion will go back to our motion.

MR. SAYRE: Well, all right, I will compromise. Is, oral, desirable here, or would you say, communications?

JUDGE ADKINS: I prefer the word, oral, because I think everything else is covered -- all written documents are covered in papers and effects.

MR. SAYRE: I will accept the amendment.

THE CHAIRMAN: Let me state it to make sure I understand it. The suggestion is to amend the first three lines to read, The right of the people to be secure in their persons, houses, papers, effects, and oral communications against unreasonable searches, seizures and interceptions shall not be violated, is that correct?

JUDGE ADKINS: That is my proposal.

THE CHAIRMAN: I don't remember who seconded Mr. Sayre's proposal.

MRS. BOTHE: I did.

MR. SCANLAN: I want to answer one point that the proponents of the Sayre point of view made over and over again. The mere fact the Supreme Court has held that wiretapping is not embraced within the Fourth Amendment does not prevent the sovereign State of Maryland acting through its Legislature to make wiretapping illegal or to restrict it in any way, but that is not necessarily an argument for putting it in the Constitution.

MRS. BOTHE: Or for leaving it out.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I think I didn't get that interception at the end.

THE CHAIRMAN: It says, To be protected against unreasonable searches, seizures and interceptions.

MR. MILLER: Then if it is supported by overlapping --

THE CHAIRMAN: The rest remains the same.

MR. MILLER: Then you end up with, The place to be searched or person to be seized, and I think you would have to have intercepted there.

JUDGE ADKINS: Or conversations -- I guess you would have to have that.

MR. SCANLAN: It will be hard to anticipate in advance what the communications are going to be.

JUDGE ADKINS: That isn't involved.

THE CHAIRMAN: What is the language?

JUDGE ADKINS: Or oral communications to be intercepted, at the very end, to meet Ted Miller's comment.

DR. BURDETTE: I doubt whether that is necessary. I have been thinking about that. I see a great

complication in reducing it, since nobody would know what warrant to get. That simply means that in the case of physical seizure, warrant is necessary; but that the interception is protected by the language against unreasonable search.

MR. SCANLAN: It may be clear to you, but it is murky to me.

THE CHAIRMAN: I think to answer you, Professor Burdette, Judge Adkins in effect is saying that there should be a warrant to authorize the interception of the telephone conversation or what have you. Judge Adkins, may I ask a question that comes to my mind? How would you think one would particularly describe the oral communication be intercepted?

JUDGE ADKINS: You mean in the petition for the writ?

THE CHAIRMAN: Yes.

JUDGE ADKINS: I should think the right to intercept conversations between the suspect and any other person would be perfectly adequate.

THE CHAIRMAN: Well, this may be too restrictive

even then, because what you may be seeking is merely permission to tap the telephone, which may be conversations between people completely unrelated. I make the point only to suggest to you that your motion be modified, instead of using that precise language at the end, to refer the precise language to the Committee.

JUDGE ADKINS: That is perfectly acceptable to me. All I wanted to get across was the idea that I think the concept of adding, oral communications, to persons, houses papers and effects, is a broadening of the search and seizure provisions to meet the modern scene. The language that is involved, I don't care, I agree with.

THE CHAIRMAN: Could we say your motion would be, and assuming Mr. Sayre accepts it, to refer this Section back to the Committee with the instructions to amend it so as to include in the things prohibited against oral communications, Interception of oral communications?

JUDGE ADKINS: Perfectly agreeable to me.

THE CHAIRMAN: Is that agreeable to you, Mr. Sayre, Mrs. Bothe?

MR. SAYRE: Yes.

MR. MILLER: Subject to a warrant being obtained that they could be intercepted?

THE CHAIRMAN: That is correct. Is there further discussion? Are you ready for the question? The question arises on the motion to refer Section 6 back to the Committee, with instructions to modity it so as to include in the prohibition against unreasonable searches and seizures the interception of oral communications and to provide that by appropriate language for the interception of such oral communications on warrant or on probable cause. Are you ready for the question? All in favor, signify by saying Aye; contrary, No. We will take a show of hands. All in favor, signify by a show of hands. Contrary. The motion carries, 15 to 2.

Is there any further discussion of Section 6?

I would like to ask the Committee this one question. It seems to me even though the language is traditional, that it is perhaps not grammatical, and I wonder also whether in this context the use of the word, warrants, is clearly referring only to search warrants.

In the Maryland Constitution, of course, you don't have the doubt, because it is, Warrants to search, or, Warrants to seize, I have forgotten exactly which. Did the Committee by any chance, consider this?

PROFESSOR ASPER: I didn't think there was any problem. I thought that the warrant provision refers, of course, to the introductory phrase, which says, The right of people to be secure in their persons, houses, papers and effects.

THE CHAIRMAN: Without discussing it further, since the Section comes back to the Committee, would you consider that and also the grammar involved in the phrase, Warrant shall issue but probable cause, and particularly describing the place, et cetera.

Any further comment on Section 6?

Section 7.

MR. GENTRY: Section 7, Any person accused of crime shall have the right to be informed of the charge against him in time to prepare his defense, to have the assistance of counsel in his defense, to be confronted with the witnesses against him, to have compulsory

process for obtaining witnesses in his favor and to have a speedy and public trial before an impartial jury without whose unanimous consent he shall not be adjudged guilty.

If you will refer to Article 21 in the present Declaration, you will see that much, or that the proposed Section 7 is an expansion rather than a deletion of the provisions of Article 21. For instance, public trial, has been added to the last phrase of Article 21 where it says, To a speedy trial with impartial jury without unanimous consent. All of that is covered by, public trial. The present Maryland Declaration, 21, says, To be allowed counsel, and we have said here, To have the assistance of counsel. I think it is a little stronger language. We have gotten away from the use of the term, indictment, because much of the prosecution is by information. We feel it is adequate to say he is to be informed of the charge against him. We haven't included, informed, in writing. We feel whatever protection he might need in that area would be covered by due process as well as the adequacy of the informing of

the defendant of the charge.

Of course, the confrontation with the witnesses is copied, and the right to examine those witnesses is embraced in certainly the words, Be confronted with the witnesses against him. We have added, Compulsory process for obtaining witnesses in his favor.

That is not added. It is in our Section 7. It is a rewrite of what is now in Article 21. In all of Article 21, with some expansions and some cleaning of language, it is embraced in Section 7.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I would just suggest, Obtaining witnesses in his favor, that In his favor might be left out. He ought to be allowed to get witnesses that he wants to call in whether they are in his favor. In other words, there oughtn't be any requirement that he show that the witness is going to be favorable to him before he is summoned.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: I am checking the United States Fifth Amendment.

PROFESSOR ASPER: The language of the Sixth Amendment, we tried to again here adapt or adopt the language of the Federal Bill of Rights where possible, and that is, To be confronted with witnesses against him, processes for obtaining witnesses in his favor, et cetera.

MR. GENTRY: All that is verbatim copy of United States Constitution.

MR. MILLER: I think it is entire surplusage. I don't think the theory is that anybody, that even counsel to be summoned ought to be summonable.

THE CHAIRMAN: Do you want to comment on Mr. Miller's point or another point?

MR. GENTRY: Mr. Miller, and speaking generally, and this was a point I was very strong on in the Committee, I felt that wherever possible we shouldn't deviate from the Federal language, for the reason that by dropping a clause, by re-editing, by changing phrases around, we could in some way change the intent or change the groundwork on which the courts have made decisions over a long period of years, based on the United States Sixth this amendment and the other amendment which we have

copied, and I felt that even though possible we wouldn't have written it this way had we been starting from scratch, but we get the full benefit of the whole body of law by adopting the United States language verbatim, if it doesn't do us any harm.

THE CHAIRMAN: I wanted to ask Professor Asper a question about Mr. Miller's question. As you know, there has recently been considerable discussion in the Maryland courts of discovery in criminal cases with decisions of the Court of Appeals greatly limiting discovery in criminal cases. If you eliminated the language, In his favor, as suggested by Mr. Miller, could you perhaps be laying the groundwork for discovery in criminal cases?

PROFESSOR ASPER: I have never thought of it, Mr. Eney.

THE CHAIRMAN: I don't want to hold up. Mr. Mindel?

MR. MINDEL: Has the Committee given any thought to the use of the word, unanimous?

PROFESSOR ASPER: In a criminal case?

MR. MINDEL: Yes, even in the criminal case. There is nothing in Article 6 in the Federal Constitution about the unanimous consent. I think there has been quite a bit of discussion about having jury verdicts, 10 to 2, 11 to 1, 9 to 6. Couldn't that be left to the Legislature? You don't have the number of jurors. You can have six or ten jurors. Don't you think that would be well placed in the hands of the Legislature?

THE CHAIRMAN: Mr. Gentry or Professor Asper?

MR. GENTRY: It was considered, and we retained it, even though it is not in the Federal. We retained it out of the present Article 21, which requires unanimous consent. We felt that in civil trial, yes, something else might apply, yes, but in the criminal cases, we felt very strongly it should be unanimous and not go unattended to, 10 to 2, popular in England.

MR. SCANLAN: England is giving serious consideration requiring a verdict only by ten or more, rather than by unanimous.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: My point is directed to a dif-

ferent aspect of Article 21, where I note the present Article reads, To call in the witnesses for and against him on oath, and that is omitted from Section 7, and my query is, where is there protection against perjury provided for in Section 7, by the omission of the portion I just read from Article 21?

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Again, I would say that the confrontation provision which we have put in certainly embraces, if you are confronted with the full meaning, Confronted with the witnesses, would mean to call even those witnesses, to ask them questions. That is the normal trial routine. How else could you have a trial except by a question and answer proceeding, and certainly, the rules are going to provide for the taking of testimony under oath.

JUDGE ADKINS: On that point, I would like to know the authority for saying that the right of confrontation involves the right of cross-examination. The right of cross-examination is specifically preserved in Article 21. The Committee seems to feel it is covered

in, confrontation, but they make no reference to any authority or comment. I am not at all sure in Anglo-Saxon history the right of confrontation involves the right of cross-examination, and I would like to be sure there is ample authority for that statement.

MR. GENTRY: A few lines down, He has a right to speedy and public trial. What else would a trial be except under the examination of witnesses?

JUDGE ADKINS: Under Napoleonic Code, you have a right to trial but not necessarily cross-examination. You put questions through the court. I don't think the right to public or speedy trial or confrontation necessarily involves right of cross-examination unless you have some authority that I am unaware of. In the absence of very clear authority, I would like something inserted here to protect the right of cross-examination.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I don't know if this covers that. There was an additional phrase that would follow, To have the assistance of counsel for his defense, and to the assignment of counsel to represent him at every stage of

the proceeding unless he elects to proceed without counsel or is unable to obtain counsel.

Has there been any problem? I know there sometimes has been problem in obtaining counsel at every stage of the proceeding. Is that assured in the language?

PROFESSOR ASPER: He has a right -- I think, The right to counsel at every stage of the proceeding is a relatively recent development.

MR. SAYRE: It seems to me we might broaden the right to be included.

PROFESSOR ASPER: Aren't we again writing or starting to write rules of criminal procedure into the Constitution, which is what we try to avoid, by using language which certainly, I think, has meaning, Right to assistance of counsel. That is all the assistance to which any accused is entitled.

MRS. BOTHE: On that phrase, To have the assistance of counsel, I am sure the Committee is aware that in Giddy versus Wainwright does not require counsel in all cases but only in relatively serious cases. I would think that that phrase might well require assignment

of counsel, not only in the cases that counsel is now assigned, that is, where the penalty is over $500 or six months in jail; I believe the present standard of the Court of Appeals is that, but it might also require assignment of counsel in Traffic Court cases and for drunk and disorderly. Personally, I wouldn't mind this, but I think the Commission ought to be aware of it when considering that phrase.

MR. MILLER: You would have to have counsel for a parking charge.

MR. BOND: Along the lines of Mrs. Bothe's comment, I am concerned with juveniles. This matter has come up in the Supreme Court for about a year, but I feel under present Maryland language, any man, the Federal Constitution, accused, and I wonder if under the Committee's language that should be any person, but would that include all juveniles having right to counsel? That would be rather earthshaking.

PROFESSOR ASPER: Man is used all the way through the present Declaration of Rights as a generic term, and obviously it includes woman. It is not meant

literally. I don't really think that man --

THE CHAIRMAN: I don't think that is his point, Professor Asper. I think,if I am following him, that juvenile in a juvenile proceeding is not a person accused of crime.

MRS. BOTHE: That is right.

THE CHAIRMAN: I think his question is whether you are purposely using the phrase, Any person accused of crime, so as to exclude from this Section the juvenile.

MR. BOND: No, sir, you are right.

THE CHAIRMAN: I take it that the Committee was deliberately confining itself to criminal matters in this Section.

MRS. BOTHE: Could I ask for an answer to my question as to whether this phrase intended that everyone would be entitled, regardless? Would you construe it that way?

PROFESSOR ASPER: No, I wouldn't construe it that way, and I don't see how it would be stated any other way without writing a code of criminal procedure.

THE CHAIRMAN: Even then, you couldn't do it,

because at the present time, there is a serious question as to whether the State is not going to have to furnish counsel to be with any person being interrogated as to a crime, once he becomes the object of suspicion, so I think you couldn't possibly delineate all the situations.

MRS. BOTHE: I do feel that that phrase would mean that a person with a parking ticket might be able to demand, if he couldn't retain private counsel, to demand under Section 7 of the new Declaration of Rights, that an attorney be appointed to appear with him.

THE CHAIRMAN: Can we get going again, please?

I would like to announce that Dr. Furman Templeton's absence today is due to illness. As all of you know, he was very anxious to be present at the sessions of the Commission discussing the Declaration of Rights, and we were puzzled when he did not come down yesterday. Mrs. Templeton called me this morning and said that he was ill and could not be here yesterday or today. We regret this very much.

Now, we will resume the discussion with Section 7.

MR. GENTRY: We were on the question of right of cross-examination?

THE CHAIRMAN: Yes.

MR. GENTRY: I feel strongly that the confrontation, the word, trial, and the due process, which was passed, those three references in Section 7 and the due process clause would certainly embrace in general language the right of cross-examination. I feel that confrontation does not mean simply bringing in the prosecuting witness and standing him in front of the defendant. I think trial has never been given a Napoleonic Code meaning. I think trial means questions and answers, examination and confrontation means the right to, embrace the right to cross-examination, plus due process, if it means nothing else, it means to give all the rights which the courts find necessary to protect a defendant and accused, giving those rights to speak in his defense and to examine the witnesses.

THE CHAIRMAN: Mr. Martineau?

MR. MARTINEAU: Just to help you out a little bit on this, I had to do a substantial amount of research

involving Patuxent, when the institution was challenged and one of the aspects was the necessiry for confrontation of witnesses, and I found that the Supreme Court has extended the meaning of due process to include confrontation. That is one of the basic ingredients of any trial that has to be held pursuant to due process, that you do have the right to cross-examine witnesses.

JUDGE ADKINS: You have used the word, confrontation, and cross-examination, as being synonymous in that sentence. Has the Supreme Court said to be confronted means the right to be cross-examined?

MR. MARTINEAU: What she said, to be confronted means the right to examine and cross-examine witnesses.

MR. SCANLAN: Two terms ago when the Supreme Court in effect said the Fourteenth Amendment embraced the protection of the Sixth with respect to cross-examination, I think those are cases which answer your question.

JUDGE ADKINS: I have great respect for the opinion of the two men who have just spoken, together with the Committee, but it seems to me that to my way of

thinking, the right of cross-examination is one of the most precious rights in the trial of any lawsuit, particularly in a criminal case. While I have also respect for the Supreme Court, I would just as soon have it written in the Constitution as rely on the changing opinions of the Supreme Court, because if they have written it in now, there is no reason why in another ten years, they can't write it out. I see no reason, other than the argument of brevity, and while I realize that brevity is essential, I don't think it should be the dominating factor; I would renew my suggestion that specifically the right of examination of witnesses be included in this Section.

MR. SCANLAN: Could I make it specific by suggesting an amendment: After the phrase, To be confronted with, appearing in Line 4, Section 7, I propose the following amendment: Comma, and to cross-examine, comma.

That would be the amendment.

JUDGE ADKINS: That would be acceptable to me.

THE CHAIRMAN: May I suggest to you that if you make that amendment, that cuts against perhaps the

suggestion made by Mr. Miller, that the Committee was considering, to eliminate the words, against him. Perhaps not.

JUDGE ADKINS: I would suggest, Mr. Chairman, that there have been two or three matters here that have been discussed. Maybe the Committee might want to reconsider some of this language.

THE CHAIRMAN: I think that might be desirable. You made two suggestions, Mr. Clagett made a suggestion involving changes in language, and perhaps the desirable thing is to refer the Section back to the Committee to consider these several suggestions.

PROFESSOR ASPER: I would like a little more guidance if that is going to be the position, because we have talked about whether, A person accused of crime, is too narrow, whether we should include juveniles, misdemeanors.

THE CHAIRMAN: Let's get at it by a series of votes to take the sense of the meeting on specific matters without trying to agree on the precise language.

MR. MINDEL: I would like to include the

change to eliminate, Without whose unanimous consent he shall not be adjudged guilty, also.

MR. SCANLAN: I second that suggestion.

THE CHAIRMAN: Let's take them up one at a time. First, Judge Adkins' suggestion that the section specifically include the right of cross-examination. I will submit these as questions without formal motions, to take the sense of the meeting. Is there any discussion of this?

MRS. FREEDLANDER: Mr. Chairman, if we can find sufficient evidence or substantiation or cases that would indicate that this would not be necessary, would we still have to include those words?

THE CHAIRMAN: If your question is directed to me, I would reply by saying one of the things that troubles me very much in the approach that this in that or the other Federal amendment and it has been construed in that or this manner by the Supreme Court is the point that Judge Adkins made, and it seems to me that there are some things that we want in the Maryland Declaration of Rights, regardless of whether the Supreme Court tomorrow

changes its current thinking and says that they are not necessary. I think that is the point which Judge Adkins is making with respect to cross-examination, that even though, under today's decisions of the Supreme Court, it is embraced within the phrase, due process. He wants to make sure that if the Supreme Court changes that rule tomorrow, it is still the Maryland rule.

MR. CLAGETT: Mr. Chairman, I am in complete accord with what Judge Adkins is suggesting here, but I would like to also possibly embrace the thought that you gave a little while ago about enlarging this to include rights of discovery.

THE CHAIRMAN: I will have that as a separate question and put each one up separately to take the sense of the meeting.

MR. CLAGETT: Would Judge Adkins agree to have that phrase read, To be confronted with and to examine the witnesses for and against him?

THE CHAIRMAN: We are not voting on precise phraseology. The idea is to refer it back to the Committee for phrasing but to take the principles involved,

and the first principle is the question of cross-examination.

JUDGE ADKINS: I would refer Mr. Clagett to have my question dealt separate and apart from that because I think yours has major overtones that might serve to defeat mine, and I don't want mine defeated.

MR. CLAGETT: On that basis, I will yield.

THE CHAIRMAN: Is there further discussion on the question of cross-examination? How many would favor having the Committee include in Section 7 a specific protection for the right of cross-examination. Opposed. 14 to 2.

Now, Mr. Clagett, you made earlier a suggestion of including something from Article 21, not this question of discovery but an earlier suggestion. I didn't want to overlook it. Do you recall what it was, some language of Article 21.

MR. CLAGETT: It was merely, To have the right of examination of witnesses for and against him on oath, and I would like to move that that also be considered by the Committee, namely, to include the requirement that the witnesses be examined on oath, or affirmation.

THE CHAIRMAN: All right, the question to be presented this time is whether the Committee shall include specific language requiring that the witnesses be examined on oath or affirmation. Is there any discussion of that proposition?

JUDGE ADKINS: May I make one comment in connection with the point Mr. Sayre made earlier about the use of the word, oath? It was not discussed here, and I don't want to discuss it except to say that the Rules Committee of the Court of Appeals has had a good deal of problem with the use of the word, oath, in the new rule, subject to, I don't know how you pronounce it, Showgurow case, and they wrote a new oath -- well, they wrote a new statement which a witness must make which eliminated the word, oath, because of a serious question on that Committee as to whether or not the use of the word, oath, was not unconstitutional. I don't press that point except that the Committee might take another look at the use of that word.

THE CHAIRMAN: I would rule then that the question referred to the Committee is the question

of including specific language requiring either oath or affirmation, or other means of assuring the truth of the statements made. Any further discussion of that point? Are you ready for the question? Those in favor of including specific language requiring that witnesses be examined on oath, affirmation or by such other means as would insure the truth of the statements made, indicate by a show of hands.

MR. BROOKS: Nine.

THE CHAIRMAN: Contrary.

MR. BROOKS: Seven.

THE CHAIRMAN: The motion carries 9 to 7.

Now, Mr. Miller's point is that the Committee consider elimination of the phrase, Against him, after witnesses, so as to make it clear.

MR. MILLER: I am not wanting to eliminate, against him. It was the right to some witnesses, and leave out, in his favor. I might explain, I have known of instances, and of course, each court has its own way of doing things, where continuances have been denied by a judge, probably very conscientiously, because he

said, well, the statements of this man are entirely against the accused anyway, and there might be some reason why the defense counsel was very eager to have him in court, and I don't think -- I think the right to summon witnesses ought not be limited by a showing that he is going to be favorable to the defendant.

THE CHAIRMAN: All right. Then I am sorry, you are quite right, I used the wrong phrase. The suggestion is that the Committee delete the words, In his favor, and I will rule for the moment that this principle does not involve the principle of discovery in criminal cases; merely the question of deleting the phrase, In his favor, after the words, Compulsory process for obtaining witnesses.

Is there any discussion? Are you ready for the question? Those in favor of having the Committee consider eliminating the phrase, In his favor, after, Compulsory process for obtaining witnesses, indicate by a show of hands.

MR. BROOKS: Fourteen.

THE CHAIRMAN: Contrary.

MR. BROOKS: Three.

THE CHAIRMAN: Motion carried, 14 to 3.

Now, let me phrase the next one in rather general terms, unless someone wants to be more specific about it: That the Committee consider whether it would be appropriate to include language specifically which would make possible the discovery process in criminal cases and report back to the Commission.

MR. SCANLAN: Would it cut both ways, prosecution have the right to take the deposition of the defendant and the defendant's supporting witnesses?

THE CHAIRMAN: I would so assume from the use of the phrase. I am not suggesting in putting the question in this manner that this is a direction to the Committee to come up with such a proposal. I am merely suggesting that they report on it and may report adversely. Mr. Miller?

MR. MILLER: There might be some difficulty if we solemnize it too much because of the constant question that comes up of people demanding to know who informers are or this or that, and the records of the

F.B.I., et cetera -- many prosecutions have had to be dropped because they can't afford to give away their change of information. I wonder if, whatever we do in this field, if we ought to be very careful in thinking it ought not to unduly handicap the proper kind of law enforcement that we all want to see done.

THE CHAIRMAN: That is an excellent reason why the matter should be very carefully studied by the Committee.

Any further comment?

MR. SAYRE: Could there be some elaboration just as to how this would work? I assume here we are talking about the source.

THE CHAIRMAN: Well, the several instances, or some of the instances in which it has arisen are these, the judge, Montgomery County Judge, Shook, in Montgomery County, for instance, ruled that the discovery rules of the Court of Appeals were applicable in criminal cases, and therefore a defendant had the right prior to trial to take the deposition of, that is, examine orally under oath or by interrogatory, witnesses who would

appear for the State. The case went to the Court of Appeals, and the Court of Appeals in an elaborate opinion held that the discovery rules were not applicable in criminal cases, as they were in civil cases.

That is one illustration, but that would be a very broad use of discovery. That is the kind of thing that we are talking about.

MRS. BOTHE: Does the Committee or anyone know whether any State constitution, and I am not speaking now of laws and rules of court, allows for discovery in criminal cases?

PROFESSOR ASPER: I have no idea.

THE CHAIRMAN: Judge Shook wrote a rather lengthy opinion in which she reviewed a great many decisions in other States, and my recollection is that there is a considerable body of professorial comment, may I say, law reviews, and whatnot advocating this, but I think it hasn't been translated into actual rules or statutes except perhaps in very few instances.

MRS. BOTHE: I was just thinking perhaps it was taking much too big a bite to ask the Committee at

this stage to investigate a completely novel and sweeping notion. I personally take the professorial attitude. I would like to see some discovery in criminal cases, but I don't think here and now is the place for it.

THE CHAIRMAN: I was trying to phrase my proposition in a way that would avoid that by saying that the Committee was requested to investigate the extent to which, if at all, there ought to be any provision with respect to this in the Declaration of Rights.

MRS. BOTHE: You are giving them an awful assignment.

MR. SCANLAN: I would be against it at any time in the Constitution. The whole question of discovery in criminal procedure is such a delicate, intricate one that it can only be worked out after the most careful study by judges, lawyers and professors, and to put it in the Constitution, as long as there is nothing to prohibit it, that is all we should do. I would hate to put something in that would require it.

THE CHAIRMAN: I should point out to you that our objective here is to investigate and prepare studies

for the use ultimately of the Constitutional Convention. This question is almost certain to arise in the Convention, and I would hope that we would have done the research for it.

Any further discussion of the motion? Are you ready for the question? All in favor of requesting the Committee to make a study of the extent to which, if at all, provision should be made in this Section or elsewhere in the Declaration of Rights with respect to discovery procedures in criminal cases, signify by a show of hands. Contrary. The motion is carried, 11 to 5.

Are there any other questions anyone wants to have the Committee consider on the reference of this Section?

MR. MINDEL: Unanimous consent, Mr. Chairman.

THE CHAIRMAN: I am not sure I will phrase this the way you have it, Mr. Mindel. If not, correct me.

Mr. Mindel's suggestion is that the requirement of Section 7 that there be a unanimous verdict of the jury in criminal cases be eliminated, so that it would be left to statute to determine.

MR. MINDEL: That is correct.

THE CHAIRMAN: Is there any discussion of that point?

MR. MINDEL: I might point out that the model Constitution provides for right of trial by an impartial jury but makes no reference to unanimous consent. It appears to me that the modern trend is getting away from having a constitutional provision by permitting that particular feature to be decided by the Legislature.

MR. SCANLAN: Many States don't require it, at least in their constitutions, and it seems to me that this day and age, when opinions of the Supreme Court are liberalizing, or expanding the protections, perhaps legitimate protections to which an accused is entitled, we shouldn't freeze the hands of the government of this State sometime in the future if they thought that because of abuses in the jury system, a decision by ten jurors would be sufficient in the criminal case. They should be permitted to reach that conclusion without their hands being tied by the Constitution, and the mother country, England, which gave birth to the unanimous

consent verdict, which is incorporated by interpretation in the Federal Constitution, is now in the process of serious attention to revising that, because of the problem they have had with jury tampering and the rising rate of crime in England, which I suppose is not rising half the rate ours is, but in any event, I think this is another area where I would trust the legislative judgment in attempting to respond to a problem that may magnify in the future. I support Mr. Mindel's suggestion.

THE CHAIRMAN: Any further statements?

MR. BOND: May I ask if a vote in favor of this is a vote in favor of changing the jury system?

MR. MINDEL: No.

MR. BOND: It is just for further study?

THE CHAIRMAN: No. The vote is not a vote in changing the jury system, except to the extent that it changes the requirement that the verdict be unanimous. This is not a vote for further study by the Commission. This is an instruction to the Committee.

MR. BOND: I would say in that event, I am not prepared to vote in favor of the motion because I

don't feel we have been presented enough material in the history or what goes on in the other States. I have here the general reasons of why we should change the present unanimous requirement. I would be in favor of studying it and having research or other arguments brought back to the Commission, but I would not be in favor of it otherwise.

THE CHAIRMAN: I don't think that is quite the point. The point made by Mr. Mindel is that the question of whether the verdict of the jury in a criminal case should be unanimous should be determined by the Legislature and not by the Constitution.

MR. MINDEL: That is correct.

MR. BOND: Even so, I would like to know in what States that is done, et cetera.

MR. MARTINEAU: Mr. Bond, in the Index to State Constitutions, it lists only eight States as requiring a unanimous verdict in criminal cases; approximately five or six permit a lesser number to give a verdict, and I think --

PROFESSOR ASPER: Criminal cases?

MR. MARTINEAU: That is right.

THE CHAIRMAN: This is by constitutional provision, not statute, that you are talking about now.

MR. BOND: I understand. Thank you.

MR. MARTINEAU: One State permits the Legislature to do it by specific constitutional reference. I would assume in the other ones, they could do it by implication.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: Mr. Chairman, I agree with what Mr. Scanlan says about perhaps we ought to have a little more fluidity, but as I gather the motion we would be voting on now, the Legislature could provide by a vote of 7 to 5, for instance, a man could be convicted of a serious crime, and my good friend, Judge Adkins, is worrying about getting even a majority, or cutting down the number of people, or holding a large number of people to vote for the passage of a simple bill. It seems to me unless we put some limit on this, we are going a little bit too far in the other extreme. I would be willing to vote that for at least ten jurors, guilty,

but I don't like to just take all limitation out of the Constitution.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I have conceded that the jury shall no longer be the determiners of law as well as fact. I cannot concede any further and will stand on the unanimity of the good, solid, true 12 as a practicing attorney.

THE CHAIRMAN: That is a comment of an outstanding defense lawyer. Mrs. Bothe?

MRS. BOTHE: I would like to point out that the present language does not constitutionally preclude a jury of less than 12.

MR. MINDEL: We are not talking about less than 12. We are talking about the vote.

MRS. BOTHE: One of the methods of jury reform, if the Legislature wanted to declare a jury of 6 or any other number, it is open in the present Constitution to do it.

MR. SCANLAN: That one area is, but if this language stays, the other area of reducing the amount

required for a verdict is not. Why give flexibility in one area of a common problem, not the other?

MRS. BOTHE: I distrust Bob's statistics because while Maryland may only be among a minority of States which say unanimous jury, I think the general concept of the common law is that a jury must be unanimous.

THE CHAIRMAN: I think you misunderstood his statistics. He was giving you merely the provisions of the Constitutions of the States. He did not mean to imply that the laws of the other States did not require that.

MRS. BOTHE: I wasn't accusing him.

MR. SCANLAN: This is an area where I am willing to trust a future modern Legislature, and I don't want to tie their hands in this document.

MRS. BOTHE: I do.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: We were talking about trust in the Legislature just a minute ago, the Maryland Legislature. A minute ago, we refused to put any trust in the United States Supreme Court. Now, speaking as

Mr. Clagett did as a defense attorney, I will speak as an old prosecuting attorney, and even I would not want to see any reduction in the unanimous verdict of the jury.

THE CHAIRMAN: Governor Lane suggests to you there is a difference.

GOVERNOR LANE: Between the Supreme Court and the Maryland Legislature.

THE CHAIRMAN: Any further discussion? Are you ready for the question? The question arises on the motion to direct the Committee to eliminate the requirement that the verdict of the jury in a criminal case be unanimous. All in favor of that motion eliminating the unanimous requirement, signify by a show of hands. Contrary.

MR. BROOKS: Six to nine.

THE CHAIRMAN: The motion is lost, 6 to 9.

Now, is there any -- Mr. Sayre?

MR. SAYRE: Since this Section deals with the persons accused of a crime, or where a crime is alleged, I would like to move a clause following, Process for obtaining witnesses, stop there, and say, To obtain

assistance of counsel for defense and add, To the assignment of counsel to represent him at every stage of the proceeding, unless he elects to proceed without counsel, or is unable to obtain counsel.

THE CHAIRMAN: Is there a second? The motion failed for lack of second.

I would like to suggest, if the Chairman would be permitted to suggest, that the Committee in its report elaborate on the problems with respect to the language, have the assistance of counsel in his defense. At the present time, the report merely comments that this is broader than the present provisions, and since this is a subject that is likely to be the subject of a great deal of discussion and debate in the Constitutional Convention, I think it would be very helpful if our report could contain an elaboration and a discussion of the problems. Mr. Asper?

PROFESSOR ASPER: May I, in my own defense, say I have never really understood the comments we provided in these interim reports to the Commission are the final version of the comments.

THE CHAIRMAN: Indeed they are not, but as time goes on, Mr. Brooks and I are becoming more and more persuaded that what is omitted from these reports has at least a chance of being overlooked in the final report, so the more we can get in now, the less the task later on. In addition to that, we are, of course, getting to the point where we must finalize the supplemental reports.

Mr. Martineau?

MR. MARTINEAU: Mr. Chairman, I think the same should be done with respect to discussing the phrase, Any person accused of crime, and as to just how far down the totem pole that goes. I don't think we really have referred that to them.

THE CHAIRMAN: I think perhaps, Professor Asper, that this indicates what we should do is to assign one of the research assistants to prepare perhaps a monograph on this particular problem.

PROFESSOR ASPER: I thought there was some question in the mind of Mrs. Bothe anyway as to whether, Any person accused of crime, is a sufficient statement of

what the Committee wants in the Section.

MR. MARTINEAU: That is right. It seems to me that what ought to be done, if you leave it the way it is, you ought to discuss in the comments what you mean by that, and that you are not intending, if you aren't, to apply it to traffic cases.

PROFESSOR ASPER: First of all, do you want to change it?

MR. MARTINEAU: I don't know that we want to change the constitutional phrase. I think we want to have some idea of what is implied by the phrase, Any person accused of crime.

THE CHAIRMAN: Any further comment or discussion with respect to Section 7? If not, Section 8.

MR. GENTRY: Section 8. No person shall be subject for the same offense to be twice put in jeopardy of punishment or be compelled in any criminal case to be a witness against himself.

This is somewhat Pennsylvania Dutch, but that is United States language. The Article 22 which this follows reads, No man ought to be compelled to give

evidence against himself in a criminal case, which is the latter half of ours. We do not presently have a double jeopardy principle stated in the Declaration of Rights.

THE CHAIRMAN: Any question? Mrs. Bothe?

MRS. BOTHE: I think it should be pointed out on the question of double jeopardy that we are to some extent making a change in the law. The Court of Appeals has held, I think in a case called Robb versus State, that the State could appeal a conviction in a magistrate's or municipal court. On the other hand, the Court of Appeals has held in a number of cases before it that double jeopardy is part of the common law. To some rather minor extent we would be changing the case law of the State by this Section 8. I approve of it.

MR. SCANLAN: In other words, if this language was the final language of the new Constitution, the State could not appeal a conviction from the magistrate's court?

MRS. BOTHE: As it now can.

MR. CLAGETT: Not a conviction; you mean acquittal.

MR. SCANLAN: Acquittal, I am sorry.

MRS. BOTHE: I think the comment of the Committee ought to reflect this so the Convention is aware of the effect of this change if it is made.

PROFESSOR ASPER: I make the same observation we had before. We are trying to get it together so you can see the language. This is the First Report.

THE CHAIRMAN: Any further questions?

MR. HAILE: I would like to ask whether this is put in jeopardy; criminal punishment in the court of law, is that what we intend? A person may be dismissed from public office for the same ground on which a criminal court has acquitted him. This says, In jeopardy of punishment in a broad sense. I wonder if that should be limited to, Criminal punishment or punishment in a court of law.

THE CHAIRMAN: Any comment?

PROFESSOR ASPER: I can't see any interpretation by which punishment would include being removed

from office for malfeasance, nonfeasance, whatever it is.

MR. MARTINEAU: What about the loss of pension rights? I think there is one case in Baltimore County going on right now.

PROFESSOR ASPER: He calls that punishment.

MR. MARTINEAU: Isn't what you really mean here, conviction?

MR. HAILE: Yes, why not say it?

MR. SAYRE: How about, offense?

MR. GENTRY: Again, this is the reason why we felt, I particularly felt, by use of Federal language, which has been given a clear meaning by the courts over a period, a longer period of years, we pick up without spelling out this detail, that detail, omitting some, going too far in some other areas. We state the principle here. It has been interpreted over the years.

MR. HAILE: Doesn't the Federal law say, In jeopardy of life?

MR. GENTRY: Yes.

MR. SCANLAN: I would have no objection if they followed the Federal language, but if you don't, you

are presented with the problem to which Mr. Martineau refers. A city official is convicted of a crime, then he is acquitted of a crime, and he is still kicked out of his job.

THE CHAIRMAN: Or a lawyer is convicted and is disbarred.

PROFESSOR ASPER: Is that punishment?

THE CHAIRMAN: Suspension may be considered as such. In other words, theoretically you could say disbarment is simply to protect the public, but suspension is certainly punishment.

MRS. BOTHE: I move the Federal language be substituted for the language proposed.

THE CHAIRMAN: Let's get in the record the precise language you are suggesting.

MRS. BOTHE: That in lieu of the present language of Section 8, that it be reworded to read, the first section of this, No person shall be subject for the same offense to be twice put in jeopardy of life or limb, and then to go on, Or be compelled in any criminal case.

THE CHAIRMAN: Strike the word, punishment, and insert, life or limb?

MR. CLAGETT: That doesn't go far enough.

THE CHAIRMAN: Is there a second?

MR. HAILE: I will second it.

THE CHAIRMAN: Now, the discussion. The Chairman of the Committee first, Mr. Gentry?

MR. GENTRY: This was considered, and the reason we dropped, life or limb, is because it doesn't go far enough. This doesn't include cases of fines, it doesn't include cases where there could be probation, suspended sentence, or any of that area, and that was the reason we felt -- I would have no hesitancy putting, criminal punishment, but let's not go to, life or limb.

THE CHAIRMAN: Any further discussion?

MRS. BOTHE: Going on the principles of the Committee, life or limb, has been construed, and in many cases to include less than penalties, imprisonment or capital punishment. If you are going to use the body of law, it has been determined to construe these words. There is no question at all.

MR. SCANLAN: Would you accept Mr. Gentry's suggestion that the word, criminal, be added before the word, punishment? That would embrace all forms of criminal punishment, but would not embrace loss of pension rights, disbarment, loss of employment, and it would be a little simpler and better language, because, life and limb, doesn't include imprisonment. No one is taking your life away and the warden is not going to saw your leg off, but, criminal punishment seems to me to embrace everything we want and yet avoid Mr. Martineau's cases.

THE CHAIRMAN: Do you accept the amendment, Mrs. Bothe?

MRS. BOTHE: I have been thinking about it because I think the conflict in my mind, I agree with Mr. Scanlan, that that word would serve the purpose. It is a question of whether we are going to use the Federal language where possible. The Committee has announced it as a principle and yet here, for some reason, they reject it.

THE CHAIRMAN: Let me suggest to you that the

Commission very early in the stages of its proceeding also said that they would not use language of existing constitutions merely because they had been construed, but would try to use language that could be understood by the man in the street.

MRS. BOTHE: I will accept Mr. Scanlan's amendment.

MR. HAILE: I do, too, as the seconding party.

THE CHAIRMAN: The motion is that the word, criminal, be inserted before the word, punishment, in the second line of Section 8. Mr. Sayre?

MR. SAYRE: This is more in the line of a question. If we simply said, No person shall twice be put in jeopardy for the same offense, why is that not adequate and leaving out the word, criminal?

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: I think the word, criminal, clears up any doubt in anybody's mind. I am speaking in support of the motion.

THE CHAIRMAN: I was directing you to Mr. Sayre's question.

MR. GENTRY: I can only say, apparently it doesn't satisfy everybody, and frankly, I would feel better with the addition of, criminal punishment, rather than to rely on, the same offense.

MR. SCANLAN: I will give you an example. In the Alger Hiss case, he was denied certain pension rights as a Federal employee. He was also convicted of perjury, a serious matter. Now, if the language you just read were the law, Hiss could argue that you couldn't punish him twice. Suppose he had been acquitted of perjury and still there was a procedure where he could be removed from the Government. He could argue he couldn't be removed. There are enough of us that feel that certain civil penalties should be imposed, even though a man has been acquitted of a criminal offense under certain situations. Isn't that about it?

MR. MILLER: Yes.

THE CHAIRMAN: Any further discussion? Are you ready for the question? Mr. Hoff, did you want to speak to this?

MR. HOFF: No, sir.

THE CHAIRMAN: The question arises on the motion to insert the word, criminal, before the word, punishment, in the second line of Section 8. All in favor, signify by a show of hands.

MR. BROOKS: Seventeen.

THE CHAIRMAN: Contrary. The motion is carried unanimously.

Is there any further discussion of Section 8? If not, move on to Section 9.

MR. GENTRY: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

This is Article 8 of the United States Bill of Rights, and it is also Article 16 and 25, 16 which reads, that sanguinary laws ought to be avoided as far as it is consistent with the safety of the State. It was felt that that was unnecessary in this day and age. This then goes on, As to cruel and unusual pains and penalties ought not to be made, and Article 25, Excessive bail ought not be required. It reads the same as what we had.

THE CHAIRMAN: Any questions?

MR. GENTRY: With the exception of the courts of law has been dropped.

MR. MARTINEAU: This doesn't reach the problem, as I understand it, of the Court of Appeals ruling that whatever the penalty the Legislature imposes, whatever makes penalty for a crime, does not conflict with this constitutional provision against cruel and unusual punishment. It always seemed to me to be not very good sense. I wonder, has the Committee considered what restrictions could be placed upon the Legislature in imposing, or establishing punishments for crimes that could be attacked as cruel and unusual punishment.

PROFESSOR ASPER: What language could be used beyond, cruel and unusual?

MR. MARTINEAU: Yes. Did you consider doing this and reject it? I don't see any discussion.

MR. GENTRY: We felt, and didn't put a whole lot of emphasis on it, but we felt again this was an area where you are going to have the strong Legislature everyone talks about and a Legislature which we can have

full confidence in, and if so, this should be left to their discussion. We didn't attempt to spell out what the fines and penalties for the various crimes should be, nor to put any range of maximums and minimums. It would be virtually impossible.

MR. MARTINEAU: The only meaning of this so far as I understand it, the Court of Appeals has held that a court cannot impose a punishment for a crime in excess of what the law allows, and you couldn't do it anyway; so this sentence, then, is meaningless.

THE CHAIRMAN: Mr. Haile?

MR. HAILE: There are certain offenses in common law where there is no maximum penalty, and this forecloses any court from imposing a $50,000 fine for inciting a riot, for example.

MR. MARTINEAU: That may be true as far as nonstatutory crime is concerned, but I think it won't be very long before we are going to have a complete criminal law section covering all crimes and there won't be any common law crimes.

PROFESSOR ASPER: May I ask, is what you are

asking here is whether we considered making this expressly applicable to the Legislature?

MR. MARTINEAU: Right.

PROFESSOR ASPER: I thought it was.

MR. MARTINEAU: I don't believe it is, and I think under what the Court of Appeals has held about cruel and unusual punishment, the Legislature can impose any sort of penalty it wants and as long as the court is within the bounds set by the Legislature, the punishment is not cruel and unusual, so in effect, this provision has been held to be meaningless.

THE CHAIRMAN: That is not literally true, is it? You are not suggesting that the Court of Appeals would say that if the Legislature prescribed punishment by rack or thumbscrew that it would be proper?

MR. MARTINEAU: I don't know about corporal punishment. Certainly as to the period of incarceration is what I am really concerned about, and that is, you can have a life sentence for statutory rape or a life sentence for --

THE CHAIRMAN: What it comes to is a holding

that imprisonment of any duration is not cruel and unusual.

MR. MARTINEAU: As long as it is within the bounds set by the Legislature, that is right.

THE CHAIRMAN: That doesn't mean that this sentence would be meaningless, though.

MR. MILLER: Would you not agree --

MR. MARTINEAU: It is under our current circumstances where we don't have corporal punishment provided by law.

MR. MILLER: Is it not agreed that a judge could strike down an excessive sentence, regardless of what the Legislature said, that if it was cruel and unusual in his opinion, that it wouldn't be constitutional?

MR. MARTINEAU: The Court of Appeals held as long as it is within the limits set by the Legislature, it is not cruel and unusual, no matter how ridiculous the sentence might be. It might be accumulative terms adding up to 2000 terms for stealing some tobacco.

MR. MILLER: Cigarettes.

MR. MARTINEAU: Yes, if you steal a carton

of cigarettes.

THE CHAIRMAN: Professor Burdette?

DR. BURDETTE: This interpretation Mr. Martineau brings forward is supported in Article 25 of the Declaration of Rights currently, which winds up by saying, all these things shall not be done by the courts of law.

Now, Professor Asper has suggested that by implication, that by leaving out the courts of law, the Committee has intended to include the Legislature. I raised the question as to whether or not by simply omitting the language courts would later interpret that our language has been simplified and it really means the same thing that the original Constitution had, and that we would be better off to put in a reference to the Legislature and court.

MR. MARTINEAU: They use the term, inflicted, and only the court would inflict the punishment.

THE CHAIRMAN: I think that is much too restrictive use of the term.

DR. BURDETTE: What do you think of my question,

that since this is inflicted, do you want to leave out the words, by courts of law?

THE CHAIRMAN: I would think it has every meaning to leave out the words, courts of law, but I suggest that the Section is not meaningless. I think that the question which Mr. Martineau raises is whether the Constitution should impose a limitation on the Legislature in the area of the length of criminal sentences.

MR. MARTINEAU: Or amount of fine.

THE CHAIRMAN: Or amount of fine. He is suggesting that as heretofore construed, the language forbidding cruel and unusual punishments does not forbid a prison sentence of any length or a fine of any amount imposed at the direction of the Legislature. He is suggesting that perhaps there ought to be some such limitation, and I understood the Committee's answer to that, that it is a matter that should be left to the Legislature.

MR. CLAGETT: Mr. Chairman, couldn't you add after the last word, inflicted by law, or I don't like the word, inflicted, but I haven't thought of one to

substitute for it, but if you added the two words, by law, that would apply to both the courts and to the Legislature.

MR. MARTINEAU: This would go along with my suggestion.

MR. CLAGETT: I would so move.

THE CHAIRMAN: I suggest to you, you don't meet Mr. Martineau's point. His point is that the Court of Appeals has said that any sentence imposed with the legislative sanction is not cruel and unusual, if it is imposed by law, it is imposed with legislative sanction; so it would not meet his point at all.

MR. MARTINEAU: Nor cruel and unusual punishment imposed by law.

MR. CLAGETT: Would obviate it at its inception.

MR. MARTINEAU: It would say that the Legislature, the law must comply with the requirement that the punishment which is imposed not be cruel and unusual.

THE CHAIRMAN: The Court of Appeals has already said that the law must not have cruel and unusual punish-

ment. They merely said that any sentence of imprisonment required by the Legislature is not ipso facto, cruel and unusual and by adding the phrase, of law, you don't change that.

JUDGE ADKINS: Isn't it true the Court of Appeals had been forced to take that position by language of the existing law which limits this to acts by courts of law?

THE CHAIRMAN:. I don't know. I didn't think so.

JUDGE ADKINS: You have to take the position that Mr. Martineau says the courts take.

THE CHAIRMAN: I would concede that the court would unhesitatingly have said that if the Legislature imposed the punishment of rack or thumbscrew, it was not authorized.

DR. BURDETTE: But Article 16, sanguinary laws ought to be avoided, but if you switch your rack and thumbscrew to a 50-year sentence for a parking fine, why then you don't have anything in this Constitution, the old one, which prevents the Legislature from imposing

such penalty.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I may be a little bulldoggish in hanging on. I am trying to get at something. If the language you suggested a moment ago doesn't do it, how about this language: No cruel or unusual punishment shall be enacted into law or imposed.

MR. MARTINEAU: Or shall be provided by law.

MR. CLAGETT: I am still hanging on to the thought that I want to stop the Legislature as well as the courts, and it seems to me it is possible, and if we can just hit upon the right phrase, we can get at it.

MR. MARTINEAU: Mr. Clagett, instead of trying to draft it here, how about amending your motion to direct the Committee to draft this so as to prevent the Legislature for providing cruel and unusual punishments in the statutes?

MR. SCANLAN: The present Constitution does.

MR. CLAGETT: I would be agreeable to that.

THE CHAIRMAN: Your motion is, then, to do what?

MR. CLAGETT: To refer back to the Committee and have the Committee further consider restricting the legislative enactment of any law which would be cruel and unusual in its punishment.

THE CHAIRMAN: Is there a second?

DR. JENKINS: I second that.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I want to point out the second clause in the present Article 16 had a prescription that no law to inflict cruel and unusual pains and penalties ought to be made in any case or at any time hereafter, but nevertheless, in the face of that language, the Court of Appeals concluded that any sentence prescribed by statute was not cruel and unusual.

THE CHAIRMAN: Any further discussion? Mrs. Freedlander?

MRS. FREEDLANDER: Mr. Chairman, if our existing provision restricts it to the courts of law, then are we not then limiting the Legislature under the present wording?

THE CHAIRMAN: That was my opinion, but it is

an opinion not shared by other members of the Commission.

Mr. Asper?

PROFESSOR ASPER: Isn't it possible that we are going to have some other phrase than, cruel and unusual, to accomplish the purpose of this?

MR. MARTINEAU: Perhaps, excessive.

PROFESSOR ASPER: You have got, excessive fines imposed.

MR. MARTINEAU: Excessive fines; I don't know. This is something I leave to your mangement.

MR. SCANLAN: That is something we don't want.

THE CHAIRMAN: Any further discussion?

MR. SAYRE: Just a question. Does this provision regarding bail make a person bailable?

PROFESSOR ASPER: Look at the comments.

MR. GENTRY: That is a new question.

THE CHAIRMAN: Not on this point. We haven't acted on this motion yet. Mr. Bond?

MR. BOND: I have one question on this point. Isn't it the feeling of the Committee that the language as drafted applies to the Legislature as well as the

courts?

PROFESSOR ASPER: That is what I thought.

MR. BOND: That is the feeling of the Committee right now.

PROFESSOR ASPER: Mr. Martineau suggested we may not have made it.

THE CHAIRMAN: Any further discussion of the motion? The question arises on the motion of Mr. Clagett to refer the Section back to the Committee to consider the addition of appropriate language to make it abundantly clear that the restrictions of the Section apply to the Legislative as well as to the Judicial branches of the Government. Are you ready for the question? All those in favor of the motion, signify by a show of hands.

MR. SAYRE: Would you repeat the motion, is this to refer back to the Committee?

THE CHAIRMAN: Refer back to the Committe for correction.

The motion is to refer the Section back to the Committee, with the instruction that the Committee consider the addition of appropriate language to make it

abundantly clear that the limitations apply to the Legislative as well as to the Judicial branch of Government. Now, all in favor, signify by a show of hands. Contrary. The motion is carried, 11 to 6.

Now, Mr. Sayre, your point?

MR. SAYRE: My question here is regarding bail. I don't see that we have provided for a person being bailable, depending upon the seriousness of the crime.

PROFESSOR ASPER: The final paragraph of our comments, which is rather concise form, or a discussion the Committee conducted on that: Most State constitutions, about forty of them as I remember, do provide that, say, a right to bail, but then they have to start qualifying it with some extremely peculiar language, most common, they have a right to bail, excepting capital cases, sometimes capital cases or those punishable by life imprisonment, some other cases specifying a list of crimes for which this right to bail will not exist, when proof is evident or the presumption great, which is very common language, and I don't think there is a soul in

the world that knows what that means; whereas the present Maryland Constitution, Excessive bail shall not be required, and the United States Constitution provides the same. That is it, and in both cases, this has been sufficient so that under the rules of criminal procedure in both the State and the Federal Government, the detailed provisions then, there shall be a right to bail, subject to these limitations.

MR. SAYRE: This I see the problem of, and I don't want to put this in a motion, but I wonder if you could reconsider having counsel at each stage of the prosecution, et cetera, just because that would take care probably of this problem, too.

THE CHAIRMAN: This is one of the questions being studied and referenced back to the Committee of the other sections, Section 7.

Is there any further question on Section 9? If not, we will suspend.

(Meeting recessed at 12:05 p.m.)

CONSTITUTIONAL CONVENTION COMMISSION

AFTERNOON SESSION
August 22, 1966 - 1:20 p.m.
University of Maryland, College Park, Maryland

Appearances as heretofore noted.

Reported by:
C. J. Hunt
and
N. Swetland

THE CHAIRMAN: May we come to order, please: Now, Mr. Gentry, we resume with Section 10.

MR. GENTRY: The privilege of the right of habeas corpus shall not be suspended, and the provisions of this Constitution shall apply as well in time of war as in time of peace. This embraces in substance Article 44 of the present Declaration which provides that in so many words, the provisions of the Constitution of the United States and of the State apply in time of war as well as in time of peace, and then goes on with what we thought was surplus language, and the departure therefrom is subversive of good government.

As well, it picks up the language of Article 3, Section 55 of the present Constitution, which says the General Assembly shall pass no law suspending the private right of habeas corpus.

We thought the language which we recommended embraces everything that is of necessity in 44 and 55, of 3.

THE CHAIRMAN: Any questions? Any comment? Move on to Section 11.

MR. GENTRY: This is verbatim Article 45 of

the present Declaration. This enumeration of rights shall not be construed to impair or deny others retained by the people.

THE CHAIRMAN: Any questions? Comment? All right, now we well move to the second part of the Report which deals with the various sections of the present Article of Rights which the Committee has not included for one reason or another. In discussing these, Mr. Gentry, do so by goups as you have in the Report.

MR. GENTRY: As to Article 10, I recall yesterday afternoon we spoke at length on Articles 14, 6 and 7, and that has been rereferred to the Committee to pick up as much of the language as possible and the sentiments expressed in there to help so those sections are not lost. Articles 2 and 3 restate the premises clause and the broad reservation clause of the United States Constitution. It is felt by the Committee that this was surplus in the State Constitution, and it is out of place, certainly, in the Declaration of Rights.

Section 4 has been mentioned. Section 5, Article 5. The present Maryland Declaration is the

retention of the Common Law of England as being the law of this State. It was felt that at any time that was unnecessary to repeat.

THE CHAIRMAN: Any questions? Go ahead.

MR. GENTRY: Sections 6 and 7 mentioned and relate with regard to Article 1. They are not forgotten. Article 8 has been eliminated. This is an article which restates the separation of powers within the State government, and each of our Articles are going to vest in the respective branch, the executive powers in one case, the judicial powers in the Judicial Articles, so it was felt unnecessary to restate separation in the Declaration of Rights. It is not a right as such, a personal right to be retained. It is consistent with the overall philosophy of the Committee to state the rights to be reserved.

THE CHAIRMAN: I think the question here is not so much the substance of the Article as the proper place, and it doesn't really belong in the Article dealing with the Executive Department, and perhaps would be in a separate article entitled as suggested, General

Government and Distribution of Powers. However, we have no committee that deals directly with that subject, and I am therefore going to refer this question to the Committee on the Executive Department, the request that that Committee consider whether the substance of this article ought to be either in the article or in the Executive Department or in a separate article.

JUDGE ADKINS: May I ask Mr. Brooks to notify our reporter since he is not here.

MRS. FREEDLANDER: The other alternative is, should it be in at all?

THE CHAIRMAN: I am not foreclosing the question. I am just referring the question of whether it should or shouldn't be in, and if so, where to a committee to act.

MR. GENTRY: Article 9 is a statement that no power suspending the laws or execution of the laws unless by or derived from the Legislature ought to be exercised or allowed.

It is felt this was unnecessary. We are, unless there is some other provision in the Constitution,

giving or allowing such a power, it would reside naturally only in the Legislature, and for that reason, we felt it was unnecessary to restate it.

Articles 10, 11 and 12 are a statement that Annapolis is the place of meeting of the Legislature and in repose. Oh, excuse me!

THE CHAIRMAN: Pleast let me interrupt you.

These three Articles have already been considered by the Committee on the Legislative Department and have been referred to that Committee. So I don't think we need to discuss them further at this point.

MR. GENTRY: Article 13 picks up what was proposed for Section 2, and of course, that has been referred back to Committee again to continue something of the language and flavor and spirit of that Article so that is not eliminated, not to be eliminated.

Article 14 which is proposed to be eliminated is a statement again relating to legislative matters, no aid, charge and tax burdens and fees ought to be burdened and levied under any pretense without the concept of the Legislature. It is felt this matter is

a legislative comment which would reside anyway in the Legislature, and it is not given anywhere else and is not a statement of a right.

Article 15, which relates to finance and relates to poll taxes and paupers and the tax levies general -- I am reading the comment of the Report -- the first clause of this Article as might by reason of the recent Supreme Court decision in Harper versus Virginia.

The second clause is unnecessary, and the balance of the provision, if it belongs anywhere, should be within the section on taxation and finance.

DR. WINSLOW: Do I understand that if Article 15 is eliminated then poll taxes may be levied?

PROFESSOR ASPER: Not now they can't, under the Harper case.

DR. WINSLOW: Only as qualifications for voting?

PROFESSOR ASPER: Yes.

DR. WINSLOW: Poll taxes as such are not declared unconstitutional, are they?

DR. BURDETTE: I think not. This poll means

head, taxes per person and would not be prohibited unless it was tied in with a vote.

PROFESSOR ASPER: Apparently I misunderstood.

MR. GENTRY: The taxing powers to be given to the Legislature and were to have reliance in the Legislature which is expected of us, it would be expected, I think, this matter should be given to the legislative article or section.

THE CHAIRMAN: I think the question is a little broader than that, Mr. Gentry. It is a question of whether the head tax of any kind ought to be tolerated, whether it is a matter that could be withdrawn from the legislative process.

MR. MILLER: You pay a poll tax on automobiles.

THE CHAIRMAN: Does anybody wish to make any motion with respect to the question of poll tax? I think this is a little different from the rest of the provisions of this Article which deal with taxation generally, and they can be referred to the Committee on Finance as I think they have already.

DR. BURDETTE: Shouldn't this one also be?

THE CHAIRMAN: I just raise the question of whether it is something that is distinctive and should be in the Declaration of Rights. Nobody suggests that it is.

The substance of that Article, if it has not already been, is being referred to the Committee on Finance.

MR. BOND: Mr. Chairman, the Committee on Finance will report on the latter part of that practice, but they haven't thought about poll taxes. I would hope that could be disposed of at that meeting.

THE CHAIRMAN: I think it is disposed of in the sense that nobody is suggesting that there be a constitutional prohibition against it.

MR. BOND: All right, sir.

MR. GENTRY: Article 16 relates to sedentary laws and cruel and unusual punishment, and that was covered this morning. Article 17 relates to ex post facto laws, and that has been picked up and covered by our proposed Constitution as mentioned this morning.

Article 18 relates to attainder, and that has

been carried forward, no elimination.

Article 19 is the kind of statement that it was felt by the Committee would be troublesome in its use if there is to be any use of it. We felt an archaic statement could probably be left out, and we already have the due process clause which I think embraces everything and much more that is stated in Article 19.

THE CHAIRMAN: Mr. Gentry, may we go back for a moment to Article 18. I would like to ask Professor Asper, is the phrase, bill of attainder, synonymous with, law to attain? I thought there was a rather technical association with the term, bill of attainder.

PROFESSOR ASPER: Bill of attainder is broader than the law.

THE CHAIRMAN: It is broad enough to include the same prohibition of Article 18.

DR. BURDETTE: I think it is doubtful, but I think the due process would. An attainder is a legislative conviction, but it prescribes by law that a person convicted would have members under attainder and penalty.

THE CHAIRMAN: That is what I was thinking, and

I was thinking if a bill of attainder would reach this.

PROFESSOR ASPER: Have no, Corruption of blood. If this is true, then they have it in there twice.

I don't understand that is the intention of this. I am confident that the bill of attainder includes this, and if you are worried about the, Corruption of blood, we have that otherwise covered.

THE CHAIRMAN: Where? Section 5?

MRS. FREEDLANDER: Section 5.

THE CHAIRMAN: Yes, forfeiture.

All right, Article 20.

MR. GENTRY: Article 20 states the trial of facts where they arise is one of the greatest security that lies with the State and/people. the It is proposed that this would be eliminated as being adequately covered by the due process provision as proposed in Section 4.

MR. SCANLAN: I would like a little explanation of that. Isn't this provision 20 in effect to guarantee a man a right to trial by a jury in the jurisdiction in which he resides? I mean, I am just asking if that is the purpose of Article 20 as it now stands.

JUDGE ADKINS: In other words, a venue provision.

MR. SCANLAN: Yes.

MR. MILLER: He is tried with the crimes committed, isn't he?

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Of course, while it may, you got the problem about the text of it. It doesn't state a right. It is a statement of fact, a principle, possibly. We don't have venue in the Sections 5 or 6, and if the Commission felt that venue is a matter which should be treated, why, you give us that direction, why we will certainly take it up, not in this text but rather we will pick it up as a matter under Section 6, I believe.

MR. SCANLAN: I am just raising the question. Someone said due process is now written in the proposed Committee draft, protection in a situation like that. I query whether or not the Legislature couldn't provide under appropriate statute that criminal cases could be transferred freely out of the jurisdiction in which the defendant resides. Would there be anything in the

Declaration of Rights as we now propose it to prevent that?

THE CHAIRMAN: Apparently not.

JUDGE ADKINS: There is nothing in the law now that requires him to be tried where he resides. He is tried where the crime is committed.

MR. SCANLAN: I am thinking of a statute where the Legislature could prescribe he could be tried somewhere else.

PROFESSOR ASPER: That depends on how you feel about the substance of due process.

MR. SCANLAN: I think very little of it. There is nothing much left to it.

PROFESSOR ASPER: Most of the questions come up as somebody who wants to be tried where the facts did not arise in present day criminal trials.

THE CHAIRMAN: Isn't the provision of much less significance today where communication and transportation is so much more rapid that so long as you know that the facts must be tried within the State, does it make a great deal of difference whether it is in

one county or another?

MR. SCANLAN: I suppose not.

MR. MILLER: The courts are constantly being asked to move cases, and they do it for the protection of the accused more than they do for a reason. But if a court thinks a fair trial can't be secured somewhere, I don't think they have to be worried about limiting their powers.

MR. SCANLAN: I wasn't thinking in those terms. I was in terms of the Legislature passing a statute under which the prosecution would have the option to try a case on the Eastern Shore or in Western Maryland. Is there anything in the Declaration of Rights as proposed that would prevent it whereas I think there is something in the old Declaration of Rights that could be relied on to prevent that sort of statute.

THE CHAIRMAN: I don't see how it could, in the language of Article 20, no prohibition and the Legislature has passed removal statutes.

MRS. BOTHE: Wherever there are certain crimes in Article 27, where they have a choice of venue

such as rape where the man is transported, you can try him anywhere along the way.

DR. BURDETTE: Or without the consent of the defendant.

MRS. BOTHE: In some jurisdictions.

MR. SCANLAN: I give it to you another way. On the Federal level, the Federal Government would be delighted to transfer some civil rights cases from Georgia to New York, but it can't do it. Now, this is the same problem in minuscule.

I am talking about a situation where the State Legislature passed a statute which would permit the prosecution to try a person where it wanted to try him. What would there be in the Declaration of Rights as proposed to prevent it. Maybe it shouldn't be prevented.

THE CHAIRMAN: Well, the answer is, there is nothing in the proposed Declaration to prevent it. Are you suggesting that there be included a prohibition of any kind?

MR. SCANLAN: I think it is something we might

want to hear from the Committee further on.

JUDGE ADKINS: I would suggest it be studied by the Committee.

MR. GENTRY: All right.

THE CHAIRMAN: All right, Mr. Gentry.

The question of whether there ought to be a venue provision with respect to criminal cases is referred back to the Committee.

MR. GENTRY: Article 21 is picked up in Section 7 which is going to require some reworking anyway, so that is not dropped.

Article 22, relating to self-incriminations presently proposed in Article, in Section 8. That is not lost.

Article 23, No man ought to be taken a prisoner and seized of his freehold privileges or outlawed or exiled or in any manner devoid of his life, liberty or property but by agreement of his peers. In a revised form, this is proposed as our Section 4 in the proposal. So that one is not eliminated.

Article 21, I mean 24, excuse me, which

provides that slavery is not to be re-established in the State and compensation, so forth, I think we spoke on it briefly yesterday, but it is recommended by the Committee that in the present daylight of the present day situation, we don't feel it is necessary to repeat. In fact, we feel somewhat out of order to repeat any such phrase. By leaving it out, I think it is the most emphatic way of expressing the idea that this is not appropriate.

DR. JENKINS: Can I make a half facetious remark? When I read this whole page of statement eliminating, justifying elimination of this clearly obsolete provision, I wondered why the Committee did this until I read Paragraph D, and then I understood its motivation. It seems to me you could save time, and some space here by inserting, obsolete, that there is certainly nothing significant about not meaning slavery and compensation at this time. I don't want to take any time with that, and that is half facetious which means it is half not facetious.

MR. CLAGETT: I would like to add also facetiously that my wife in filling out an application

where it said, occupation, a housewife, she said slave.

PROFESSOR ASPER: Let me say one thing. The reason why we felt to explain this in some detail, many of the recent constitutions in Michigan, Alaska and other places are still keeping in this. It strikes me.

THE CHAIRMAN: Article 25.

DR. BURDETTE: It may have some facts if you are worrying about peonage.

MR. GENTRY: Article 25, the section relating to bail and cruel and unusual punishment, which requires some rework anyway, and that is not lost.

Article 26 is search and seizure and picked up in Section 7 of the draft.

Article 27 is corrupted blood and forfeiture of State and that has been retained in Section 5.

Articles 28, 29, 30, and 31 and 32 all relate to military matters. They are all recommended to be deleted or picked up as to at least one phase by the Miscellaneous Provisions Committee.

THE CHAIRMAN: They have been considering it in that Committee?

MR. GENTRY: Yes. Article 33.

DR. BURDETTE: Why do you think 31 inapplicable?

MR. GENTRY: 33 relates to the Judiciary, and in an attempt to preserve the integrity of the Judiciary, it is felt that this is not a proper form for inclusion in the Bill of Rights.

THE CHAIRMAN: I think it has already been referred to that Committee, and if not, it will be referred to the Committee on Judiciary Department. 34.

MR. GENTRY: 34, Long continuance of the Executive Department is dangerous to liberty. We already have the limitation on the term which was felt covers this situation, so we feel that has been picked up by the Executive Article.

Article 35 is the, No holding of two offices of profit at least in the first part, and that has been or will be dealt with by the Committee on Miscellaneous Provisions. The second phase, the second portion of it, No foreign principals/State, nor shall any person holding of honor office receive any present from any foreign principals or State. We thought that was not necessary

in today's events, in light of today's times.

JUDGE ADKINS: Do I understand the first sentence of Article 35 is not being by the Committee eliminated but is being considered by another Committee?

MR. GENTRY: Yes. The last portion will be dealt with in the Miscellaneous Provisions.

Articles 36, 37 and 39.

THE CHAIRMAN: 36 and 37 have already been considered in conjunction with the action taken earlier on Articles --

MR. GENTRY: And it is recommended that 38 be deleted as being outmoded, and 39 relates to the administration of an oath, and that is to be picked up. The oath will be spelled out. Now that is the disposition of those four sections.

Article 40 has been picked up by Section 2 of the proposed draft, and that is the freedom of speech and rights and that is being reworked to incorporate some of this language if possible.

Article 41, Monopolies are odious, contrary to the spirit of free government and principles of

commerce, it is felt that this also could be eliminated. It only relates to State-created monopolies, and it is felt that had no place in the Declaration of Rights. If it appears anywhere, it should be a limitation on legislative powers.

Article 42 it is felt is outmoded, Article 43.

THE CHAIRMAN: That doesn't prevent the Governor from creating admirals in the Chesapeake Bay.

PROFESSOR ASPER: Not any more. There is one.

THE CHAIRMAN: There is more than one. We have a half dozen admirals in Chesapeake Bay.

PROFESSOR ASPER: Obviously the article never worked.

MR. GENTRY: Article 43 is a statement which is largely language which is not expressive of a right, certainly. This is the subject of further study by the Committee on Miscellaneous Provisions.

PROFESSOR ASPER: I think we should give fair warning if it is deleted it is going to produce some arguments.

JUDGE ADKINS: The second sentence will produce

a lot of arguments.

THE CHAIRMAN: The Chair is well aware of such contemplated action.

MR. BOND: Doesn't the second sentence refer to fines?

MR. BROOKS: That is right.

MR. GENTRY: So it is recommended to be deleted here, but it isn't lost sight of by reason of its referral.

MRS. BOTHE: I might say on that subject I was wondering whether the Committee had any notion of putting this sentiment that is the sentiment in the first half of Article 43 in the Preamble.

MR. GENTRY: No.

MRS. BOTHE: The education article isn't going to contain any such statements, as you know from the preliminary draft you have already received, and I think it might be a good idea to give somewhere an expression of support to the notion of knowledge is not virtue.

THE CHAIRMAN: I would like to defer further consideration of that until the September meeting when we

have the report of the two Committees, Miscellaneous Provisions and Fines. They haven't finished their hearings, and both have a good bit to report on this general subject.

MR. GENTRY: Article 44 is the provision that the Constitution will apply in time of war and peace, and we have just seen that in Section 10 of the recommended draft. The language in the latter portion has been deleted as being archaic to some extent, inexpressive of any definite principle.

Article 45 is retained verbatim as the concluding section in Section 10 of the proposed draft.

MR. CLAGETT: Mr. Chairman, in order that we not lose sight of all of the discussion of yesterday when Mr. Case was present, I do move that all of the Articles falling within the Declaration of Rights as reviewed by the Commission today be reconsidered by the Committee along the lines of trying to retain some of the historic language, and if not, the specific language we capture the spirit of the historic language where it is consistent with the whole rewriting of the Constitution.

THE CHAIRMAN: Mr. Clagett, I suggest that motion would be contradictory to everything we have done in the session last night and this morning,by going through each provision in an agonizing detail to refer it back to the Committee with a general instruction like that would be equivalent to the motion Mr. Case made at the very beginning of the consideration of this Article. The Committee wanted specific instructions which I think we had given them. I will submit your motion, but I suggest to you that it would be completely contrary to what we have been working on yesterday and today.

MR. CLAGETT: Would you prefer to rule it out of order?

THE CHAIRMAN: No, I won't rule it out of order. If you want to submit it, I will. I think it would be a very inappropriate thing to do, and I think it would leave the Committee with rather complete confusion as to just what their instructions were.

MR. CLAGETT: May I say this, Mr. Chairman, that in all probability, the Committee when it attempts to do that or as it attempts to comply with the motion of

yesterday is going to find that it is going to fall for want of capability and consequently, they will come back recommending just what they have already done.

THE CHAIRMAN: Then let them come back with their report, and if it isn't satisfactory to the Commission, then they can certainly take up any further amendment.

MR. CLAGETT: In the light of that, I will withdraw it.

THE CHAIRMAN: Any further discussion of this Report?

All right; then again, if my notes are correct today in consideration of Sections 4 to 11 and the eliminations recommended in the Report we have approved all with amendments except Sections 6 and 7 which are referred back to the Committee and also further study of Article 20 of the existing Declaration of Rights which was referred back to the Committee. Now, let's move on to a consideration of the Report of the Committee on the Judiciary Department. While you are looking for that Report, it is the one dated August 20, Third Report of the Committee on the Judiciary Department, a wee bit

long, comprising, I think, 52 pages. I am going to suggest a course of procedure here a little different from what we have been following.

This Report is quite comprehensive. It submits for the consideration of the Commission at one time the entire proposed Article on the Judiciary, and it was received by all Commission members much too late to enable them to make a thorough study before this meeting. I have asked Mr. Martineau to take ten minutes initially to outline the scope of the proposed Article so that you will have a sort of birds-eye view of the entire Article. Then I would like to go through the Article section by section as we have been with this modification. Since this is the first time the Report has been submitted and undoubtedly will come back again if not this September, very shortly thereafter, I would suggest that we not get into a detailed discussion of language or relatively minor details. I suggest that because otherwise we will not be able to finish a preliminary consideration of the entire Report this afternoon. That, I am most anxious that we do. I think if we can have a fairly detailed but

not too detailed discussion of the entire Report this afternoon, you can read the Report with much more meaning and understanding, and if we get through only a part of it.

Now, with that, you go ahead, Mr. Martineau.

MR. MARTINEAU: First of all, I would like to make a few introductory comments. As all of you were made aware of yesterday, I am strictly here to pinchhit as Chairman. Up until the beginning of this month, Richard Melvin was the Chairman of this Committee and actually was the Chairman during the period when all the work was done on this Report, so really I am presenting this to the Commission on his behalf, even though he is no longer a member of the Commission.

You may recall that he suggested Judge McWilliams as Chairman of the Committee, but up until Judge McWilliams was appointed to the bench, we had no meetings nor done any work. I am serving under a disability here of having only two Committee members present. The other three who are not present are Mel Sykes, John Hargrove and Clarence Miles, two of whom, Mel Sykes and John Hargrove are rather recent additions to the Committee. I think all of

you are aware that Marvin Radosky served as reporter to the Committee during the entire time it has been working. First of all, I want to apologize for the length of the Report. We probably should have presented this as we went along in various sections. For some reason, we didn't, and we now have the 50-page Report which is much too long. This is designated as the Third Report. The First Report was submitted to you last February in which some basic considerations on the structure of the court system and selection of judges was presented in the Report or were presented in the Report, and they were approved in principle. That, of course, was a long time ago, and a lot of water has gone under the dam.

The Second Report was never considered by the Commission. It was presented to the, just to the Commission just prior to the meeting in July at Easton, but no action was taken on it; so even though, this is stated to be the Third Report, really all you have done up to now is approve some of the proposals in principle. You have seen none of this language. I think I should state that in working on the Judiciary Article, the Committee

worked extremely closely with two committees, one a special committee of the Maryland State Bar Association of which Judge Dykes was a chairman. This is actually a subcommittee of the entire Committee on the new Constitution of which Judge Sherbow was the chairman. Also, we worked with a Committee of the Judicial Conference of which Judge Ralph Powers was the chairman and Judge Dykes and Judge Powers along with Judge Niles attended practically all of our meetings, and there were quite a few.

We also had a number of public hearings on this at which interested people, usually members of the Judiciary were present and we had quite a going over on all of these proposals.

Now, getting to the Report itself, as you can see, the first page is 212, is a complete draft of the proposed Article, and then after that, we break it down. Now, we have divided the Article into three parts. The structure of the court system is dealt with in Sections 1, 2, 3, 4 and 5. The administration of the courts within that structure is dealt with in Sections 6, 7 and 8

and 14, and the question of the selection, retention and removel of judges dealt with in Sections 9, 10, 11, 12 and 13.

Now, dealing first of all with the first part, Sections 1 though 5, concerning the structure of the court system, these are rather short sections, and basically what we are proposing here is that the judicial power of the State be vested in a four-tier court system beginning at the top a Supreme Court, at the next level an intermediate Appellate Court, below that, a trial court of general jurisdiction, and at the lowest, fourth level, a trial court of limited trial jurisdiction.

Now, the basic concept here is that the entire judicial system is one system for purposes of administration, financing and operation and each of the courts is one single court. This, of course, is easy to understand when you consider the two Appellate Courts, that is the Supreme Court and the Appellate Court itself a little different, the proposal that we don't have in our present Constitution, that is that the trial court at the general leval and the trial court at the court of limited juris-

diction is just one court. We have the Superior Court which is one court that sits throughout the State. You do not have separate courts in the various counties or separate courts in Baltimore City or separate courts in the Circuit and the same thing is true of the court of limited jurisdiction. This is one single court which sits throughout the State. It is divided into divisions, as I will explain later. This is a very important concept and one which we feel rather strongly about, and I think everyone who has considered our proposed Article has agreed that this is how the system should be established so that you do not have the great number of individual courts sitting throughout the State as we have under the present Constitution.

Very briefly, the Supreme Court is to be the highest court of the State. It will have seven members and will have the jurisdiction as provided by law. The Appellate Court will be a court which will, of course, hear appeals which will be below the Supreme Court. It will be composed of such number of judges as may be provided by law so that the number can be expanded as

the times require. The court can be divided into panels so that it can sit in various parts of the State or ought to be divided into panels by subject matter so that you could have possibly one panel of the Appellate Court which would hear criminal cases or one panel that would hear other special types of civil cases. This is all permitted. It is not required. The jurisdiction of the court would be as established by law. The general trial court is known as the Superior Court which will be the court in which all original jurisdiction will reside unless placed otherwise by law.

The courts will have a chief judge and such number of judges as may be provided by law, and we have included in here a requirement that there be at least one resident judge in each county.

The District Court, which is the court of limited jurisdiction, will have such jurisdiction as may be provided by law which is to be uniform throughout the State. It will have a chief judge and such number of other judges as may be provided by law. We don't provide here for one judge for each county for reasons which I

will explain later on. We also have provided for commissioners who will be authorized to issue arrest warrants and to determine whether and in what amount bail is required.

Now, that is the structure of the court system. The administration of the court system is covered in Sections 6, 7, 8 and 14. The proposal contemplates that the Chief Justice of the Supreme Court will be the head of the judicial system. Now, tied to that is the power in the Supreme Court of the State to make rules governing the administration of the court which is something that I don't believe they have either had or have not exercised up until now, and between these two powers we contemplate that the Supreme Court and the Chief Justice will administer the court system as a rather tightly run ship. There will be a chief judge of the Appellate Court who will under the Chief Justice administer that court. There will be a chief judge of the Superior Court who will administer the trial courts of the State and who will also be the Chief Justice's chief assistant in the administration of the judicial system. There will

also be a chief judge of the District Court who will administer the District Court under the supervision of the chief judge of the Superior Court.

Now the Supreme Court is given broad rule-making power governing the practice and procedure in the court, governing the administration and discipline of members of the Bar and governing the administration of the courts. The Chief Justice is designated by the Governor, and in the event that he is unable, there is a vacancy in that office, or is unable to carry out his duties, the senior member of the Supreme Court will carry out his duties.

Now, the Sections 9 and 10 cover the selection and retention in office of the members of the Judiciary and what we are proposing here is rather simply known in Maryland as the Niles Plan. The Niles Plan, of course, is not any very definite plan. We have provided the details to that Plan, but it essentially contemplates that whenever a judicial vacancy occurs, a nominating commission for that particular court will recommend from two to five lawyers for the vacancy. The Governor

is to select one of them. When that judge serves first a probationary term and then a full term, he stands for reelection to that office in a noncompetitive election. The nominating commissions are to be composed of an equal number of lawyers and laymen. The laymen are to be selected by the Governor, the lawyer is elected by his fellow lawyers and a member of the Judiciary as the odd man on the Commission. We provide certain working rules for the nominating commissions. We provide in here that to be eligible to be appointed judge, a man must have certain minimum requirements and must meet such certain residency requirements. The term we have provided in here for a two-year probationary term and then the question of how long his full term will be is something that is still a matter of debate and is going to have to be decided by this Commission and subsequently by the Convention.

We provide an automatic retirement, and you may run into more trouble on this than I thought -- automatic retirement of judges at the age of seventy, but we authorize the Chief Justice of the Supreme Court with

the approval of that court to authorize retired justices or judges to perform judicial duties. We have the usual provisions about compensation of judges and prohibiting judges from engaging in certain kinds of conduct. We always have provided a system for removal of judges which is quite similar to the plan which will be voted on in November. That is to authorize the removal or retirement of judges for misconduct or other reasons. We have given the power to remove or to retire judges to the Supreme Court rather than to the Legislature, because we think that is the more appropriate place for it.

Section 14, which I did not mention before, deals with clerks of courts and essentially provides that the clerks will be appointed rather than elected.

Now that, in very brief summary, is the Judicial Article as we propose it. The only aspect of the Judicial Department which we have not considered and will come in later unless you point out some other things that we haven't considered deals with the office of sheriff and what function the sheriff ought to play in the service of

process and other duties connected with the Judiciary.

We have not considered how or what provision should be made here for the service of process and what officer should make it.

THE CHAIRMAN: Then let's proceed to a consideration of the draft, section by section.

Section 1.

MR. MARTINEAU: The consideration of the Article section by section begins on the bottom of Page 12 and the comments start on Page 13. As I explained, we are proposing the four here, we state the judicial power of the State is expressed exclusively in a unified judicial system consisting of the Supreme Court, the Appellate Court, the Superior Court, and the District Court, and as I explained, each of these is conceived to be one court, not a number of clerks for each part of the State.

The first language is vested exclusively in these four courts means that the Legislature cannot create other courts. We did not do as the Federal Constitution does merely to provide that the judicial powers shall

be vested in such courts, in the Supreme Court, the Appellate Court as the Legislature may desire to create. We believe that it is much better to establish this four-level system and then to permit flexibility in moving the jurisdiction of these courts around, and in that way, any of the problems which may arise through court suggestion or specialized problems can be handled by law rather than by amendment to the Constitution.

The use of the language, unified judicial system, is perhaps more greater than anything else, but it is designed to show that this is one system for the entire State which did consider the use of the language that this, that the judicial power would be vested in one court of justice which is the language of the American Bar Association model judiciary article. We rejected that on the basis that it is really incorrect to think of the entire judicial system as one court since it never sits as such, and there would be no, nothing done by the Judiciary under the name of the court of justice.

We used the language, unified judicial system, but really we mean the same thing. The names of the courts

as you will see from the comment, we had a lot of difficulty with that. We are not, I think, as -- we finally decided these are the best names that we can recommend. The Supreme Court, we think, is more descriptive of the place of the court in the judicial system of the State. I think since we are proposing an intermediate Appellate Court that the judicial name of the Court of Appeals for the State's highest court is no longer proper, because it is no longer the Court of Appeals because there is an intermediate court which perhaps in time will be the court which will hear more appeals than the Supreme Court which hears only a few. So we are recommending the name be changed to the Supreme Court, and by the way, I think we found that in rather limited investigations that we made that the Supreme Court was actually the name that most people unconnected with the law thought was the name of the State's highest court. Of course, it is itself the name in which virtually all the States use for the names of their highest courts.

Now, we had proposed originally that the court be known as the Supreme Court of Appeals. We found, after

our original Report came out that this met with very little favor and that most people including most lawyers whom we talked to would prefer to have the court known as the Supreme Court. The term, the Appeallate Court, was thought to be more descriptive, particularly will be when the court which we think in the future will be the basic Appeals Court, the court that you will, first of all, appeal to if you want to go beyond that; or if you try to go beyond that, you will have to do it by means of certiorari or something like that. This will be the court that will, in the first instance hear most appeals, and we think the term, Appellate Court, is descriptive. Most States for the intermediate Appellate Court use the term, the Court of Appeals, but we feel because of the long usage of the name for the State's highest court that that would be most confusing. So we decided to leave that out. The Superior Court will take the place of what is known now as our Circuit Court and in Baltimore City the six courts constituting the Supreme Bench of Baltimore City. This will be the court in which all general original jurisdiction will be invested in until the

Legislature gives jurisdiction to the lower court which is the District Court. We felt that the term, Circuit Court, although it is traditional, really would not have much meaning under the new system because we are not proposing that the traditional circuits be retained. We feel that the circuits as they have existed up to now have long since outlived their usefulness. They really don't have any meaning any more because each county now has its own Circuit Court judge.

There are no judges who sit for an entire circuit and who have the responsibility for several counties, and we don't propose in this draft to use the name, circuit, at all; and frankly, we don't know whether circuits will ever be used under this system.

The term, District Court, is another phrase that gave us, a term that gave us a lot of trouble. Our original proposal was to call it People's Court in line with the name that has been used in Maryland for the last fifteen or twenty years. We found, however, that there was grneral dissatisfaction with this name, and after the action of the State Bar Association this summer in

recommending the name of the District Court for the new court of limited jurisdiction, we decided to go along with that. We thought perhaps originally that the term, District Court, might be confused with the Federal District Court, but on reflection, we felt that that perhaps wasn't much of a problem. The District Court will take over, we would anticipate, the functions of the trial magistrate system, and People's and Municipal Court in Baltimore City and People's Courts in the counties of the State where they have been created.

We have made no provision here for any allocation of the jurisdiction of the Orphans' Court. This may, under our proposal it is automatically going to be in the Superior Court, but of course, this can be shifted to the District Court by the Legislature if it so desires. We don't frankly know whether it is better to have it in the Superior Court or whether it is better to have it in the District Court. But this is something that can be resolved by the Legislature.

THE CHAIRMAN: But in any event, there will be and can be no Orphans' Court.

MR. MARTINEAU: That is correct. There will be no Orphans' Court. It is provided that the jurisdiction --

THE CHAIRMAN: That is another section.

Any questions on Section 1? Mr. Miller?

MR. MILLER: I would like to know if the Committee has considered the qualifications for judges of the District Court or any of the courts.

THE CHAIRMAN: It is a later section.

MR. MARTINEAU: That is a much later section.

MR. BOND: I would like to ask about the election. Is that a later section?

THE CHAIRMAN: Yes. The only section we are dealing with at this point is Section 1 which means the courts in four tiers.

MR. GENTRY: I would like to hear a little more on the elimination of the Orphans' Court as to what might be the breakdown of other States.

THE CHAIRMAN: Let's wait until we get to the sections dealing with jurisdiction.

MR. HAILE: Mr. Chairman, I would like to bring to your attention the word, exclusively. In

the present Constitution, it is not used and in the model Constitution, it is not used. I would like to ask if the Legislature has not in the past frequently delegated jurisdictional power to local boards for administrative decisions and by use of the word, exclusively, is there any danger that such boards be abolished in the same manner as Orphans' Courts are abolished. Has the Committee considered this problem of zoning boards, for example, exercising quasi-judicial power?

MR. MARTINEAU: That is the answer to it. They exercise quasi-judicial power, and this has never been considered an exercise of judicial power of the State. I don't frankly think the Legislature, too.

THE CHAIRMAN: Isn't that the basis on which the constitutionality of those agencies under the separation of powers doctrine has been upheld that they do not exercise the judicial powers, but it is quasi-judicial?

MR. HAILE: I would feel more satisfied if we omitted, exclusively. In some cases, part of the judicial powers is delegated by the Legislature.

MR. MARTINEAU: There would be a question if we took out the word, exclusively, whether the Legislature could create specialized courts. We want to prevent that. We want the four-level system and no other.

JUDGE ADKINS: What does this do to the Tax Appeals Court?

MR. MARTINEAU: That has always been considered an administrative agency and not a court.

JUDGE ADKINS: Even under the most recent structure?

MR. MARTINEAU: As I understand it, yes.

MR. BOND: Mr. Chairman, my question is not as to the method of election but as to, for instance, the Superior Court in the areas which the voters would recall.

THE CHAIRMAN: This is covered under another section.

Any further questions as to Section 1? I might suggest to the Committee that again thinking in terms of our ultimate Report, that Mr. Haile's query is a very pertinent one and should be explored and

discussed further in the Report. I again want to emphasize that in my earlier suggestion that we move quickly on this Article, I do not mean to suggest that we are adopting precisely the language in any final sense. Mr. Haile's suggestion may very well come back to the Commission in another session with some modifications.

MR. MARTINEAU: As we go along, we certainly would appreciate any suggestions that anyone would want to make in areas where you think we are going in the wrong direction or using the wrong words or missed some points because every now and then we think of something ourselves that we haven't put in and can't understand why we for got it.

So it may very well happen that something may occur to one of you that we have not considered.

THE CHAIRMAN: I was just trying to check before we leave that as to whether the Reports of the Executive Department and the Legislative Department which contain similar phrases use the word, exclusively. The Legislative does not. It says, The legislative power of the State shall be vested in the General Assembly.

It doesn't say, exclusively, in it; and I don't know about Executive. I don't think they have a section.

JUDGE ADKINS: I don't know, either.

MR. MARTINEAU: I am not so sure taking out the word, exclusive, would affect the Article at all.

THE CHAIRMAN: It says simply the executive power of the State is stressed in the government. Neither one use the word, exclusive.

MR. MARTINEAU: If the power is stressed in four courts by the Constitution, this would seem to me by implication prohibit the Legislature creating any other courts and stressing any power in those courts.

MRS. BOTHE: I was wondering since I heard very little screaming on the subject whether the Commission couldn't possibly adopt the names as proposed in Section 1, because it has caused the Committee so much difficulty; every time you write another report, we change the name and have brackets for possible other names. If these names are agreeable to the Commission, I would think it very convenient if they were adopted here and now.

THE CHAIRMAN: I think this is an excellent suggestion, and I would like to add to what Mr. Martineau said, that I know of no part of the Report on the Judiciary Article that has been the subject of more debate and discussion than the first section on what to name the court. I think with the possible exception that we name the District Court, if there is not unanimity of thought, there is almost by resignation at least, unanimity of thought for the names of the first three courts. Does anybody have any strong feeling or any feelings in opposition to any of the four names?

JUDGE ADKINS: I don't like them, but I have no proposal in opposition.

MR. CLAGETT: I don't like them, either, but I am going to accept them with what they have got rather than throw another monkey wrench in the works.

THE CHAIRMAN: Since you are carrying the sword of traditionalists, the traditionalists have suggested names such as Court of General Sessions, Court of Petty Sessions, any number of which have English origins.

MR. CLAGETT: I will not carry that sword

that far.

THE CHAIRMAN: Mr. Haile?

MR. HAILE: I never understood why we don't call it the Maryland Supreme Court. Or the Supreme Court of Maryland.

MR. MARTINEAU: Really, we don't speak in the Legislative Article about the General Assembly of Maryland. We don't speak in the Executive Article about the Governor of Maryland. There seems to be no reason to be when you are talking in the context of the Constitution for the State of Maryland when you speak of the Supreme Court you necessarily mean the Supreme Court of Maryland. Just as an illustration, I might say the present Court of Appeals designated in the Constitution as the court, as a Court of Appeals and on its easel it has the Court of Appeals of Maryland, and I see, frankly, no reason why that wouldn't be used in the future for the Supreme Court where it is referred to outside of the Constitution. It may be well that it is referred to as the Supreme Court of Maryland. But there is no reason to put those words in the Constitution.

THE CHAIRMAN: Mr. Scanlan?

MR. SCANLAN: I was engaged in a long piece of litigation in Connecticut at the time they abolished the town courts of Connecticut and reestablished them as inferior, courts of inferior jurisdiction below the Superior Courts of Connecticut, and they called them the District Courts, and I know at least when I left that litigation in Connecticut, the lawyers and people were confused. The terms, District Court, seems to imply a higher status than was really intended. I don't know what you can do with it. I would prefer a Court of Common Pleas myself, but I don't feel that strongly about it.

MR. SAYRE: Wasn't that one of the intentions to eliminate?

MR. MARTINEAU: Exactly, that is one of the purposes to upgrade the notion of this court, not being a trial magistrate's court or something on that level.

MR. SCANLAN: The trouble is the name is upgraded to the point that it is equal to the Federal District Court or the Superior Court.

MR. CLAGETT: I move that the nomenclature as suggested by the Committee be adopted.

MR. BOND: Second.

THE CHAIRMAN: Any discussion?

MR. MILLER: The question.

DR. BURDETTE: I wonder if Mr. Haile's suggestion doesn't have some merit in getting this language in once. I am noticing, for instance, with respect to General Assembly that in Article 3, Section 29, there is a language, be it enacted by the General Assembly of Maryland, as far as I see hastily. The idea occurred to me with respect that certainly the Supreme Court ought to be known as the Supreme Court of Maryland. If we say, in a unified judicial system, the Supreme Court of Maryland -- and thereafter give it a justification for what Mr. Martineau says it will take, but we also give it that name.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: My problem was and I wanted to ask this question. On the District Court, are the District Courts to be divided down to districts so you

will have a District Court for the four districts?

THE CHAIRMAN: Yes.

MR. MARTINEAU: Yes.

THE CHAIRMAN: Mr. Haile?

MR. HAILE: I would like to point out that if you leave Maryland out of the title of the Supreme Court, if you substitute, a, in place of, the, a Supreme Court, then the Legislature could make a title or the court itself could adopt its own title. That is what I get from the Federal Constitution that says there shall be a Supreme Court.

THE CHAIRMAN: Dr. Winslow?

DR. WINSLOW: In the National Constitution, it refers to the President of the United States. It refers to the Congress of the United States, but when it comes to the court, it merely says, a Supreme Court.

MR. CLAGETT: Mr. Chairman, I point out that Article 3, Section 1 of the Constitution does say that the Legislature shall consist of two distinct branches, a Senate and House of Delegates and shall be styled the General Assembly of Maryland, and in the light of that

which I thought it did not so provide, I am going to amend my own motion and move that the nomenclature of the four-tier court be the Supreme Court of Maryland, the Appellate Court of Maryland, the Superior Court of Maryland.

THE CHAIRMAN: No, no; one court.

MR. CLAGETT: Superior Court of Maryland and the District Court of Maryland.

MR. MARTINEAU: I am glad to see my expectation has not been disappointed. A wonderful discussion of names.

THE CHAIRMAN: The language you read with respect to the Legislative Department is from the present Constitution. The new proposed draft does not contain that language. You have amended your motion. I don't recall who seconded.

MR. BOND: I did.

THE CHAIRMAN: You accept the amendment?

MR. BOND: No.

MR. CLAGETT: Then if I don't get a second, I will go back to the original.

MR. GENTRY: I will second it.

MR. HAILE: I would be inconsistent if I didn't second it, so I will second it.

THE CHAIRMAN: No, but the motion as seconded, stands.

MR. CLAGETT: I have withdrawn the motion and submitted a new motion.

THE CHAIRMAN: I hold you out of order.

MR. BOND: May I explain?

THE CHAIRMAN: I don't think it is necessary. I think we are losing time.

MRS. BOTHE: I am sorry I brought up the name question.

THE CHAIRMAN: Don't be. I am ruling out of order your submitting a substitute. I am not ruling out of order anybody else who wants to submit one. Is there any further discussion.

MR. SAYRE: What is the question?

MR. BOND: That we accept the Committee recommendation.

THE CHAIRMAN: The question arises on this,

Mr. Clagett's motion to approve the nomenclature of Section 1 as submitted by the Committee.

MR. MILLER: The question.

MR. GENTRY: I move the motion be amended to include the language adding, Maryland, after each of the courts.

THE CHAIRMAN: You second the amendment, Mr. Haile?

MR. HAILE: Yes.

MRS. BOTHE: They call the question.

THE CHAIRMAN: Any discussion of the amendment?

MR. SCANLAN: If the District Court of Maryland confuses even further with the United States District Court sitting at Baltimore.

MR. MARTINEAU: The Committee has considered this and has rejected it as being unnecessary and perhaps unwise and the Committee feels that this should not be done.

THE CHAIRMAN: Let me make one comment. All other discussion finished on the amendment? Let me make one other comment about this. I was only, as Dr. Jenkins

would say, being half facetious, and therefore half serious in my statement that this section probably caused more time and debate and discussion with the Committee than any of the other provisions. I think that is perhaps only literally true, and I would hesitate very much to see the Commission on this very brief consideration adopt a change. I would much prefer, quite frankly, to see the Commission adopt the motion or a modified version of the motion that the nomenclature is tentatively approved rather than see you take a definite position that will result in the phrase, of Maryland, being written into all of our other reports.

I think this can cause trouble.

MR. SCANLAN: Isn't the procedure unless so changed by a motion on the floor, the recommendation of the Committee is tentatively adopted?

THE CHAIRMAN: Yes, except that Mrs. Bothe raised the question; to set at rest this question, she would like to have the motion.

MR. SCANLAN: The very reason you gave that the Committee spent more time on this section than any

other would serve justification for this Committee spending more time on it. I move that the motion to approve be tabled.

GOVERNOR LANE: Second.

THE CHAIRMAN: The motion is not debatable. You ready for the question?

JUDGE ADKINS: Parliamentary query. If it is tabled, what happens? Do we go to Section 2?

THE CHAIRMAN: We go to Section 2 and there is no further consideration. I am not a parliamentarian.

Ready for the question? Those in favor of the motion to table, please signify by a show of hands: Opposed. The motion is carried 8 to 7. Section 2.

MR. MARTINEAU: Section 2.

THE CHAIRMAN: Lest there be a misunderstanding, and again I am announcing that I am not a parliamentarian, I take it this does not preclude consideration of Section 1 at any other subsequent session of the Commission.

DR. WINSLOW: This can be taken from the table, sir, I think, Section 2.

THE CHAIRMAN: Section 2.

MR. MARTINEAU: Section 2 is on Page 17. And discusses what we call the Supreme Court, which may now be called something else. It establishes that the Supreme Court shall be the highest court of the State and shall have such jurisdiction as provided by law.

Now, there may be those initially who feel that it is much too risky to say that the Supreme Court shall only have such jurisdiction as provided by law and that the Legislature could be stripped of all its jurisdiction. However, this is exactly the same provision as in the current Constitution, and as far as we know, there has never been any difficulty with it. The difficulties we think would arise if you tried to specify what the jurisdiction of the court was. We think that would create many more problems. In addition, it wouldn't help to specify that the court would have appeal at jurisdiction because that would not confer any specific appeal at jurisdiction. All it would require the Legislature to do would grant appeal at jurisdiction in another particular kind of case, so we see no advantage in either, in mentioning appeal at jurisdiction. As a matter of fact,

there is some, there may be some sort of cases in which the court will exercise original jurisdiction. Certainly, the power given to the court by our proposal for the removal and retirement of judges would be an exercise of original jurisdiction of a type.

MR. MILLER: They have already included original jurisdiction in redistricting.

MR. MARTINEAU: That is correct. We have mentioned in our comment that the court will exercise original jurisdiction in reapportionment cases. So we don't think it is well to mention the word, appellate. We do put in the phrase that it shall be the highest court so that we can't ever have the situation whereby the Legislature will provide for an appeal from the Supreme Court to the Appellate Court, in other words, turning it around if there were some reason that they were unhappy with the decisions of the Supreme Court. This will still be the highest court of the State.

THE CHAIRMAN: Any questions?

JUDGE ADKINS: Is it the Committee's opinion that Sections 2 and 3 read together give the Legislature's

power the right to deny the right of appeal in any given set of cases from the Superior Court to either of the two Appellate Courts?

MR. MARTINEAU: Yes, just as the right they have now, the right to appeal under the present Constitution is not one which is constitutionally created but one that merely exists by status.

JUDGE ADKINS: Did you give any consideration to the possibility of including it somewhere in either Sections 2 or 3 that the right of appeal from the Superior Court shall be a constitutional right to the Appellate Court or Supreme Court?

MR. MARTINEAU: Yes, there may be cases where you will appeal from an administrative agency to the Superior Court or the District Court to the Superior Court where you would not want to apply for appeal.

JUDGE ADKINS: How about cases of original jurisdiction in the District Court?

MR. MARTINEAU: It may be that the court will have original jurisdiction and concurrent jurisdiction in the District Court. We saw no reason to provide for this

automatic right of appeal. There has been no difficulty with that through the years. If anything, it has been exactly to the contrary. The one thing the Legislature doesn't want to do is cut off the right of appeal.

THE CHAIRMAN: I might add to that, Judge Adkins, that while I think practically everybody who worked with the Committee on this was of the opinion that there ought to be at least one right of appeal. Their feelings were that this could safely be left with the Legislature and it is not necessary to put it in the Constitution.

JUDGE ADKINS: I certainly agree with the first part of the statement. I am not sure I agree with the second part.

THE CHAIRMAN: It isn't protected by the Constitution now, as you know.

JUDGE ADKINS: No, but here you are constructing a new court system for the first time with an intermediate Appellate Court, and I think there is more chance now that positions will be given and classifications are not appealable simply by virtue of the fact that they are approved almost de novo.

THE CHAIRMAN: I think unquestionably the thought is that there will be instances where the Legislature will allow appeal to the Appellate Court and not permit appeal to the Supreme Court.

JUDGE ADKINS: I have no objections to that. I won't pursue it at this point because I gather this is thought up for final consideration.

THE CHAIRMAN: Any further questions on Section 2?

DR. BURDETTE: I have a question on Part B of Section 2, if we are discussing that also.

THE CHAIRMAN: We have not got into it.

DR. BURDETTE: You are talking about 2(a)?

THE CHAIRMAN: Yes.

Now, 2(b).

MR. MARTINEAU: 2(b) provides for the composition of the Supreme Court. It provides it shall consist of a chief justice and six associate justices. Four justices shall constitute a quorum, and the concurrence of four shall be necessary for a decision. The last Section is one that caused a great deal of difficulty.

The State shall be divided by law into appellate judicial circuits of the Supreme Court. That has reference to the eligibility of persons to be appointed to the court and deciding whether to put it here or in the eligibility section we just arbitrarily put it here. It is perhaps better placed in the eligibility section, but it didn't fit very well in there, either, but that has reference solely to the appellate judicial circuits with respect to residency requirements for members of the court.

The seven-member court is the size of the court now. We intend to keep that. We are changing the designations of the members from judges to justices. We feel that that name is more indicative of the court in which they sit. It is more traditional. It is other than those States that use courts of appeals, the members of the highest court are always referred to as the chief justice and the associate justices of the Supreme Court, and we feel it is an appropriate change. We do permit four members of the court to constitute a quorum so that it can sit without full membership, and we also require

that concurrence of four, in other words, a majority of the entire court shall be necessary for a decision. Our comment, we mention that we do not anticipate that the court will sit regularly in panels, as it does now, with five on and two off. We believe that the court should sit as a full seven-man court whenever possible, and that the 7-5 plan is the only way it should have gone five or six years ago.

MR. MILLER: A question.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I understand that later on you provide that the chief justice or the acting chief can select judges to sit on any court.

MR. MARTINEAU: That is correct.

MR. MILLER: In the case of illnesses and absences, the court could still function with four decisions even if one of the judges was drafted from a lower court.

MR. MARTINEAU: Oh, yes, just as it is now.

MR. MILLER: That is commonplace.

MR. MARTINEAU: Yes, to continue the practice

of authorizing judges of lower courts to sit on the Supreme Court on designations by the chief justice.

MR. SCANLAN: Is it your feeling because of the certiorari jurisdiction that you are contemplating and perhaps limiting the category of direct appeals that will be permitted to the new Supreme Court, it would be unnecessary to continue the panel system on the ground that a lot of their work will then be deciding whether to hear, and that can be done on the papers without the necessity for a formal oral argument?

MR. MARTINEAU: Not only that, but I think all of the information we have from the current court is that the 7-5 plan, the panel system really doesn't cut down on the work load of any of the judges of the court.

They all review the opinions even though they haven't sat, as they sit in on conferences, and there really isn't any advantage to the current system.

THE CHAIRMAN: Professor Burdette?

DR. BURDETTE: I have a good many problems of confusion caused by the statement in 2(b) with respect to the last sentence.

The State shall be divided by law into appellate judicial circuits of the Supreme Court. One reads the comment that this pertains only to eligibility, but my first trouble is that no layman reading this would get any such idea, and even after he reads it, I think it is 9(b), he still doesn't; and I, as a layman, if I were sitting in the Legislature, raise the question why don't we by law provide on the basis of this sentence that the Supreme Court shall sit in appellate judicial circuits. There are some other problems. I don't know the answers to these, but it may be helpful to raise the problem.

I think the use of appellate judicial circuits is a bit confusing because it is confusing with the Appellate Court.

Well, I read them on and discover the Appellate Court has no fewer than four associates, so I suppose it could have forty.

MR. MARTINEAU: That is correct.

DR. BURDETTE: What are you going to do about, how many an appellate judicial circuit shall be? The

Constitution would say not less than two; therefore, because it says, circuits, we could have, I suppose, four and three from each of the two. Well, I think the Constitution is not absolutely clear with respect to whether -- maybe it is, but it is not crystal clear whether the chief justice must come from one of these circuits because it says, and I can't find it, but it says, To be a justice, but no such language has been used in the composition of the court. The members of the court are called a chief justice and associate justices.

MR. MARTINEAU: That is answered by the fact that the chief justice is designated by the Governor from among the associate justices of the courts.

THE CHAIRMAN: Dr. Burdette, would your first point be met by a phrase, for instance, as for purposes of selection of justices and judges or justices here, The State shall be divided by law into appellate judicial circuits.

DR. BURDETTE: I have no objection to this. This is just confusing. It is terribly confusing in

classrooms in a university.

MR. MARTINEAU: I think I understand your problem, and we are going to consider again where is the best place to put this, realizing there is confusion created.

DR. BURDETTE: It is the problem of these appellate judicial circuits because that sounds like it has something to do with the Appellate Court, and then further, Mr. Chairman, the word, circuit, the point I have not made here, too, is confusing because they don't consider circuits, they are not sitting as circuits, so this seems to carry over a language of the past which has no point here.

THE CHAIRMAN: I think this is a prime illustration of the fact we are using language which is very meaningful to lawyers because we are familiar with it and completely meaningless to the average person.

MR. MILLER: What the Doctor says is quite sound in many ways. Couldn't words like area or region be put in there to clarify the problem?

THE CHAIRMAN: I think this is what Mr. Martineau

meant when he said he had the point in mind that Dr. Burdette mentioned.

MR. MARTINEAU: We understand the problem, and we will frankly consider this again in an effort to clarify the residency requirements and that we are only talking about that.

MR. CLAGETT: I want to be clear that the members of the Supreme Court are not to be selected at large over the State but from these geographical areas.

THE CHAIRMAN: That is the import of the provision.

DR. BURDETTE: Of which there should be not less than two.

MR. CLAGETT: Not less than seven.

THE CHAIRMAN: Oh, no.

MR. MARTINEAU: We are not writing in the Constitution that we vehemently oppose writing it into the Constitution.

MR. CLAGETT: That is what I thought I was digging up.

MRS. BOTHE: Along these lines we had some

controversy in the Committee as to whether any such districting should exist at all. It was to simplify the grammatical problem, the people went along with the minority I happened to be in, and that was that the justices of the Supreme Court should be selected in the same manner as those of the Supreme Court of the United States without any geographic, mandatory geographic requirement.

It would be understood and probably followed that the Governor would make his selections around the State and with a view to a balanced court. But the idea of having appellate judicial circuits essentially the way we ended up, this is something of a compromise between what Mr. Clagett suggests, which is that we follow the current Constitution and spell out the particular areas in which the judges would have to come, and the idea of having no districts at all.

I think it is a very poor compromise, and the difficulties we are having in expressing it in the Constitution is the result in part of that. I think the Commission, before we get bogged down in the question of

where to put this sentence or what it should contain, would have to decide the basic issue of whether we are going to have to district the Supreme Court and if so, whether the Legislature or the Constitution is to do it.

My own view is that nothing should be said on that score.

THE CHAIRMAN: Let me say so that it will be clear to the Commission that it is my understanding of the Report as it was written that it provides for geographic representation on the Supreme Court, but leaves to the Legislature the delineation of the areas, geographic areas, from which the Supreme Court justices shall be selected, with one modification that it should not be less than two areas of the State.

MR. MARTINEAU: Mr. Chairman, I would like to make one comment, that frankly, in considering this, if the Committee could probably go back to its original proposal, it would do so; and that is, there be no appellate judicial circuits provided for, in other words, that the members of the highest court come from any place in the State. Most State Constitutions do not impose

residency requirements for their highest courts. We, in effect, were battered and bruised and pushed, and we finally gave in and put it in at least to this extent, that we would provide for the appellate judicial circuits to be established by law.

But I think there is one thing we are very clear on and one thing we would oppose very strongly. That is writing into the Constitution all specific appellate judicial circuits. This would be a great mistake. Thi is a concession on our part, and I think if someone made a motion to eliminate that proposal entirely and provided that the members of the Supreme Court come from any place in the State, I suspect the Committee would probably be glad to hear it.

MRS. BOTHE: I will make a motion to delete the last sentence of Section 2(b).

THE CHAIRMAN: Is there a second?

MR. SAYRE: Second.

THE CHAIRMAN: Mr. Clagett?

MR. CLAGETT: I would very strongly oppose that motion. I do feel that the strength of our Court of

Appeals has been from the fact that it has drawn its roots from the entire State, and to permit the concentration of judges from Prince Georges County only would be adverse to the best interest of the entire State.

I do feel that Baltimore ought to have at least one judge on the Supreme Court, and similarly, the Eastern Shore should have one, and Western Maryland should have one; and the rest of them can come from Prince Georges. But to permit us to have all of these judges because of the fact that we are the most rapidly growing county populationwise in the United States, and I am not going to have what was suggested here, the most competent legal minds, I will concede there are others elsewhere, but at the same time to permit us to have a monopoly on the membership of the Supreme Court would be adverse to the tradition of that court, and consequently, I would very strongly oppose it. I would also take the position and make the statement as made by Mr. Case that to adopt this resolution at the present time because I do feel so strongly about it would certainly mean that there would be, I would certainly not feel

limited in any efforts to defeat it at a later stage.

MR. MARTINEAU: I would like to reply to that. We were not unmindful of the advantages that can come from having judges from throughout the State. The investigation that we made proves that any fears they won't is completely unfounded in other States where they do not have this requirement. The practical necessity of appointing judges requires that they come from throughout the State, and this has happened in every State that has, the majority of the States in the country that have no residency requirements for the members of the highest court of the State.

They do come from all over the State, and you don't find a concentration. It would be political suicide for a governor to make such concentration in one particular area.

MR. SCANLAN: Your research didn't carry you into the Federal Court where four members now sit there, and three are from Baltimore.

JUDGE ADKINS: Chauvinism for no other reason would require me to support Mr. Clagett's motion. It

would be completely unsafe for me to cross the Chesapeake Bay Bridge tonight unless I did.

MR. SAYRE: It is just buttressing the argument, political arguments confronting the Legislature are such that we just don't have to worry about these geographic areas, and I would much rather rely upon the Legislature here where I don't think we have to rely upon. They are political enemies.

MR. CLAGETT: I am sort of like Dr. Jenkins. I like the flags waving.

MR. MARTINEAU: In discussing this with judges from the Eastern Shore and with members of the State Bar Committee who were most vociferous in urging that the appellate judicial circuits be mentioned in the Constitution, none of them urged that the actual circuits be defined in the Constitution.

They were all perfectly content to permit this type of language, and that is, the appellate judicial circuits be provided by law.

DR. BURDETTE: That is all right.

MR. CLAGETT: I am not going to get that, and

that is why I am taking the position now of opposing the motion that we delete the last sentence of Section 2(b).

THE CHAIRMAN: Any further discussion? Ready for the question. The question is on the motion to delete the last sentence of Section 2(b). The effect of the deletion would be to leave, so far as the Constitution is concerned, the selection of justices of the Supreme Court on a Statewide basis. Leaving the sentence in requires geographic representation on the court.

All those in favor of the motion to delete, signify by a show of hands. Contrary. The motion is lost 5 to 11.

MR. MARTINEAU: Now, you know why we put it in.

THE CHAIRMAN: Any further question about Section 2(b)?

MR. MILLER: The wording is be revised?

THE CHAIRMAN: Considered by the Committee, that is right.

JUDGE ADKINS: One further question. Did the Committee consider the number from seven to five and go

back to the old system in view of the fact the case load will be substantially relieved by the intermediate court.

MR. HOFF: The original proposal of the Committee was a Supreme Court of five.

MR. MARTINEAU: That is correct.

MRS. BOTHE: I was much impressed with Judge Grooms who was kingpin of the notion of five when we had a hearing. He said as long as they were not going to sit in panels, the main objection was met, and he wasn't very vociferous if it was five or seven.

JUDGE ADKINS: How can you prevent them from sitting in panels?

MR. MARTINEAU: You can't prevent them. They can sit in a panel of four if they want to.

MRS. BOTHE: You can't prevent them.

THE CHAIRMAN: The unanimous opinion of the judges on the bench today is, they would not.

JUDGE ADKINS: What was the reason, to maintain the status quo?

THE CHAIRMAN: If I may answer that: After trying to persuade the Committee and others to go back

to five, Judge Grooms took me back in the corner of the room and gave me a lecture on what he called political realities.

MR. MARTINEAU: Section 3 is complementary to Section 2(a) which says, The jurisdiction of the highest court shall be as provided by law. This is actually the very same proposal that had been voted on this fall in the correction of the new intermediate Appellate Court which provides exactly that, but the jurisdiction of that court shall be as provided by law, and we think that is the best way to handle the jurisdiction of this court.

It is going to have to be flexible. It will be changed from time to time, depending upon the circumstances, and we see no reason to write into this any other provision.

THE CHAIRMAN: Any question? We will move to 3(b).

MR. MARTINEAU: 3(b) is a little different from the provision for the Supreme Court. It says, The Appellate Court shall be composed of a chief judge and

no fewer than four associate justices as proposed by law. The Appellate Court may sit in panels of no fewer than three judges, as provided by Rule. The State shall be divided by law into appellate judicial circuits of the Appellate Court.

That is a little different provision. That is the same provision we have with respect to the residency requirements of the Supreme Court, and everything that has been said about the Supreme Court can also apply to this.

THE CHAIRMAN: I take it that the Committee would consider the rephrasing and relocation of that sentence?

MR. MARTINEAU: That is correct.

THE CHAIRMAN: Any question?

DR. BURDETTE: You have to bear in mind that as the Appellate Court can ultimately get very large as provided by law to tie these appellate circuits, as they are called, in with the circuits for selection of the Supreme Court won't fit together.

MR. MARTINEAU: We don't intend to do that. The Appellate Court may sit in panels of no fewer than

three judges.

DR. BURDETTE: You are talking about the circuits, but they are not the same.

MR. MARTINEAU: The appellate judges will all be elected Statewide according to our proposal.

DR. BURDETTE: But they must come from appellate judicial circuits which are created here so they sound like the same ones of the Supreme Court.

MR. RODOWSKY: Appellate circuits, the Appellate Court in this Section contemplating they will be different because you have in the beginning even a different number of judges.

THE CHAIRMAN: Any further questions on 2(b)?

Section 4.

MR. MARTINEAU: It provides the Superior Court shall have original jurisdiction in all cases except as otherwise provided by law and such other jurisdiction as provided by law.

That sounds confusing, but we put it in for this reason; first of all,it is a depository for all original jurisdiction, and the first phrase, except as

otherwise provided for by law, permits the Legislature to give whatever jurisdiction it deems appropriate to the District Court. Then, and such other jurisdiction as provided by law, means they can also have jurisdiction other than original jurisdiction which is appellate jurisdiction from the District Court. It could also exercise the power of revision of sentences which may or may not be an exercise of original jurisdiction. It can hear appeals from administrative agencies which may or may not be considered original jurisdiction. For that reason, we have put it in, that they have all original jurisdiction.

The Legislature can give some of that original jurisdiction to the District Court, and the Legislature can also give the Superior Court some jurisdiction which may not be considered original jurisdiction.

THE CHAIRMAN: Any questions? Any comments? 4(b).

MR. MARTINEAU: 4(b) provides the Superior Court shall be composed of a chief judge and such number of associate judges as provided by law, which shall be at least one resident judge in each county. This will

operate on much the same system as we now have with respect to the Circuit Court. Each county has one judge, and they have such other number of judges who must come from each county as the Legislature deems appropriate.

We would contemplate the same system.

THE CHAIRMAN: Any questions?

JUDGE ADKINS: I have a question in connection with this Section, and Section 5(b).

Provided that each county shall have a Superior Court judge, but you have not so provided with the lower court, the District Court. It seems to me this is, at best it tends to downgrade the Superior Court if there are more judges in the Superior Court than there are in the District Courts.

MR. MARTINEAU: I don't think that would be a downgrading.

THE CHAIRMAN: Of the Superior Court?

JUDGE ADKINS: If you got one of those for every county and a lesser number of lower court judges, it seems to me that you are.

MR. MARTINEAU: You may very well have a higher

number of lower court judges, but you may not have one in each county. In Baltimore City you may have fifty District Court judges which would outnumber the rest.

JUDGE ADKINS: I have another question with regard to Section 5(b).

The real question is whether you feel it is politically essential that you feel that each county should have a resident judge.

MR. MARTINEAU: Mr. Eney got a bloody head on one thing, and we got it on another. We found the State Bar Committee and the other groups that we talked to would be very strongly opposed to writing in this requirement. We don't feel it is, frankly, that important. We feel with the current situation that we have now that each county has a resident judge, whether we put it in here or not, we are going to keep the resident judge in every county, and that situation is not going to change.

However, as a concession, we wrote it in here. We don't think it is really essential, but we don't think it does any harm to write it in.

THE CHAIRMAN: Any further question on 4(b)?

Section 5.

MR. MARTINEAU: Section 5 (a) provides, The District Court shall have such original jurisdiction as provided by law, and, Jurisdiction of the District Court shall be uniform throughout the State.

We have, of course, only provided it may be given only original jurisdiction. I couldn't think of any other jurisdiction it might have . In addition, we state the jurisdiction shall be uniform throughout the State. We originally had a provision in here that the exclusive jurisdiction of this court shall be uniform, but it was pointed out to us that there is no real reason to limit the uniformity of the exclusive jurisdiction as long as all of the jurisdiction is uniform throughout the State, the exclusive jurisdiction would be uniform and be concurrent, jurisdiction would also be uniform and wherever you need an increase in the concurrent jurisdiction to permit in metropolitan areas more cases to be tried in the lower courts, it could be done by increasing your concurrent jurisdiction. But this permits the parties in a smaller county who wish to go directly to

the Superior Court to still do so because the jurisdiction is concurrent rather than exclusive.

DR. JENKINS: Will you explain to me as a layman which of the present courts would become District Courts?

MR. MARTINEAU: None of them. Actually, the schedule would probably provide that those judges of the present People's Court of Baltimore City, present Municipal Court of Baltimore City and the People's Court in Montgomery County, Prince Georges County and Howard and Anne Arundel would become the judges of the District Court, the trial magistrates, non-lawyer judges, would be abolished.

DR. JENKINS: The question may sound simple to the lawyer, but what about the Traffic Court, handling of juveniles? Are they at the level of District Courts?

MR. MARTINEAU: They would be at the level of District Courts. They would handle all of the minor matters both in criminal --

DR. JENKINS: What about justices of the peace?

MR. MARTINEAU: They would be abolished.

MR. MILLER: This would have no effect on such as the State Accident Commission, would it?

THE CHAIRMAN: No.

MR. MILLER: Their appeals would go to the Superior Court.

THE CHAIRMAN: The Legislature would control that.

MR. MILLER: Decide where the appeal would go.

MR. MARTINEAU: That is correct.

MR. CLAGETT: Mr. Chairman, if the jurisdiction of the District Court which includes Prince Georges County or a part thereof by the Legislature is set at $5000, that would be uniform; I mean under the requirement of uniformity, that would be the limit of the District Court sitting in Calvert County or part of that county.

MR. MARTINEAU: That is correct.

MR. CLAGETT: Then, further, such a District Court could include a part of Calvert County and a part of St. Mary's County.

MR. MARTINEAU: No.

MR. CLAGETT: Where is that restriction?

MR. MARTINEAU: You will see in 5(b) a division of the District Court for each district. A district shall consist of at least one county. If a district is composed of two or more counties, they shall be contiguous, and no county shall be divided.

MR. CLAGETT: Calvert and St. Mary's are contiguous.

MR. MARTINEAU: They could be a district for the purpose of a District Court, the two counties.

MR. CLAGETT: And that District Court would have the same jurisdiction, namely, $5000, in the example I gave. That is what is meant by uniformity.

MR. MARTINEAU: That is right. But the jurisdiction, as I explained, can be divided between exclusive and concurrent.

MR. GLAGETT: I see.

MR. MARTINEAU: So you have perhaps $1000 exclusive jurisdiction and $1000 to $5000 would be concurrent. You, in Prince Georges County, might decide to go in one court while in St. Mary's County, you might decide to go in another court. You would have the choice.

MR. CLAGETT: Who came up with that idea? That is a very good one.

MR. MARTINEAU: I will take credit for it.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: Is there any provision which would require a district judge in a multi-county district to hold court in the district in the county of the litigant's residence,or is it possible under the Constitution for a judge to hold court only in one fixed place so that a county resident today has to travel to County B in order to have his case looked at?

MR. MARTINEAU: That is possible under this proposal. We would provide that our -- our proposal is that where and how often the court sits would be subject to the rule of the Supreme Court.

JUDGE ADKINS: I don't think that ought to be. I think there ought to be a constitutional requirement if there is a multi-county district at least the litigant is entitled to have the court sit in his county. I don't think he ought to have to travel fifty or sixty miles to have his case tried.

MR. MARTINEAU: I don't conceive that will be a problem. You are going to have a court house in every county. You are going to have a resident judge in every county, and it seems to me conceivable that you would have a situation where the Supreme Court would not require the judge in a multi-county district to sit in both counties. I don't think it arises to the level of a constitutional requirement where I try,the practicalities of the situation are going to wind up with the same result.

JUDGE ADKINS: I have known some leading judges in my time.

MR. MARTINEAU: They would not decide for themselves where they are going to sit. It is very easyfor the Supreme Court to say the judges of the District Court must travel.

THE CHAIRMAN: Mr. Gentry?

MR. GENTRY: Is my question on Orphans' Court still reserved, or is it proper to ask it?

THE CHAIRMAN: It is proper to come up now. I have it noted.

MR. GENTRY: I don't know of anything special for the Orphans' Court, but I would like to know the reason for dropping it.

MR. MARTINEAU: I do know what the trend is nationally. Certainly, any proposal for any new judiciary system doesn't contemplate a separate probate court. Any discussion or any study I have ever seen relating to the State of Maryland also contemplates that the Orphans' Courts will be abolished.

The Committee didn't have any difficulty with that problem. There is a unanimity of feeling among people who have studied the problem that the Orphans' Court ought to be abolished.

THE CHAIRMAN: I would like to add to that, certainly, for more than fifty years in Maryland the official position of the Maryland State Bar Association has been to seek the abolishment of the Orphans' Courts. I think the First Report or one of the early Reports is in the early part of this century. The real reason is not so much that there is no necessity for a separate probate court as it is that the present system of having

a probate system administered by so-called judges who are not schooled in law or not trained in the administration of the State who are elected in a popular election for a short term is simply all wrong. This may have had some reason behind it in the last century when the courts really were more truly Orphans' Courts administering relatively small estates of local people for orphans, but the problems that the probate courts cope with today are certainly not of that character, and you either have one of two things.

First, as to 90 per cent of the Probate Court, it is largely routine and administerial. It doesn't require court action and as a matter of fact, the functions are performed by the Register of Wills.

As to the 10 per cent or maybe less of the functions, they are truly judicial functions, and it is rather absurd to have a system under which wills are construed and important property rights are disposed of by a court which has no training in the law at all, and you provide an appeal from that court. It is just one of those things that no longer makes sense.

I tried two years ago a case before an Orphans' Court in one of the counties consisting of a retired farmer, a retired insurance man, and a gang foreman, I guess you would call him, a case which involved intricate questions of probate law that had never before been decided by the Court of Appeals of the case went to the Court of Appeals and is the subject of a very lengthy opinion.

MR. SCANLAN: We have abolished it in Montgomery.

THE CHAIRMAN: Correct. By constitutional amendment.

Mr. Clagett?

MR. CLAGETT: I carry no grief for the Orphans' Court, but a few moments ago, I used an example when we were dealing with the question about Calvert and St. Mary's which are geographically separated by the Patuxent River.

I now propose the query of Calvert and Dorchester separated by the Chesapeake Bay. Would they be considered contiguous insofar as districts are concerned?

MR. MARTINEAU: I believe the courts have held that the county lines run to the middle of the Bay, so they probably are. But I don't think that is very likely.

MR. CLAGETT: The future and population growth and so forth plus many related problems might.

THE CHAIRMAN: I should think that would worry Judge Adkins more than it does you.

MR. CLAGETT: I am thinking in terms of the objective of the proposition.

MR. MILLER: Is it the thought that there might be a District Court that would be larger than one county?

MR. MARTINEAU: Yes.

MR. MILLER: What about probate of wills and things like that, as he is speaking about. It seems to me rather unusual that a man might be arrested at midnight for some State road violation and have to go 100 miles to get a trial. It would seem to me that there ought to be more districts than there are Superior Court judges rather than less.

MR. MARTINEAU: This goes to the, we have followed here essentially the recommendation of Dick Case's Committee which was adopted by the State Bar Association this summer in Atlantic City. These districts are going to be flexible, and you may very well wind up in a very few years that you will have a district in each county. We are not writing them into the Constitution, and the reason for it is as I understand it, that there is a strong feeling presented to Mr. Case's Committee by the lawyers from the Eastern Shore that they just didn't need a district judge in each county, and he would be wasted.

Now, to cover the problems of making bail and issuing of warrants, we do provide in Subsection (c) for commissioners who will be appointed and have enough in the county --

MR. MILLER: Could a will be probated before a commissioner?

MR. MARTINEAU: No.

THE CHAIRMAN: Mr. Miller, it is not contemplated in the constitutional draft or by the Committee that the functions of the Orphans' Court or the Register

of Wills could be performed by the District Court. The Committee contemplates this will be performed by the Superior Court. They are pointing out merely that the matter is up to the Legislature. The Legislature could at some future date take the function away from the Superior Court and give it to the District Court, but I think the consensus is, the thing now is that that would not be the case.

MR. MILLER: What about the man who has to stand trial for exceeding 25 miles an hour and -- can he be tried before a commissioner?

MR. MARTINEAU: No, he couldn't be tried before the commissioner. I would have to appear before the judge, but the court will be held in a sufficiently convenient number of places, it would seem to me, as established by the Legislature.

MR. MILLER: He couldn't exactly be tried by the Superior Court judge. He would have to go before the District Court.

MR. MARTINEAU: That is correct unless the Superior Court judge in a county was designated to sit on the District Court for some reason. This can be done

under our assignment provision.

MR. MILLER: It could be provided if it was a geographical hardship.

MR. MARTINEAU: That is correct.

MR. CLAGETT: Going back to the Superior Court, the provision is there made for at least one resident judge in each county. Does that mean that there shall be one Superior Court for each county?

THE CHAIRMAN: There is one Superior Court sitting in each county.

MR. MARTINEAU: If you will look at Section 14 with respect to the clerks, you will see that we have provided that there will be a chief deputy clerk of the court in each county, and we feel that there isn't going to be much difficulty, that if you have a judge and a clerk of the court in each county, you are going to have the same situation that you have right now. You are going to have a court house in every county. You are going to have all of the same affairs that are carried on in the court house now under this new provision. You will be able to -- the District Court, if probate jurisdic-

tion should be assigned to the District Court, you will be able to go there.

The Register of Wills office will be there. The District Court judge will come by once or twice or three times a week to take care of whatever affairs are presented to him. Really, it is going to operate as far as the convenience of the public is concerned much the same way as it does now.

THE CHAIRMAN: Any further question on Section 5?

Mrs. Bothe?

MRS. BOTHE: I think considering Section 5 that the Commission, particularly the lay members ought to recognize that this is one and perhaps the only section which have the Judiciary Article which would actually make an immediate change in the way the laws are being administered, at least those counties or places where there are no People's Courts or Municipal Courts.

It is a very radical change, as I understand it, though I don't happen to come from one of those areas. If the recommendation of the Case Commissioner were followed, once this new Constitution goes into effect,

there might be as many as five counties in one district, or I think the contemplation is one district has five, one has three, and another has three, isn't that correct?

JUDGE ADKINS: District Court.

MRS. BOTHE: On the District Court. Instead of having a plenipotentiary of justices of the peace and committing magistrates of whom there are six or eight in each county, there would be one judge covering as many as five with the assistance of a commissioner for setting bail on arrest warrants but quite a different setup than we now know it.

I personally have been getting some calls about the practical workings of this thing. I am all for it in principle.

MR. MILLER: In principle, it may be all right, but I come from a very small county,and it is a much bigger county from litigation than it was when I served as trial magistrate, but there were literally hundreds of traffic cases. I can't, as of today, our trial magistrate in the Town of Easton has put nearly a semi-full time job, and I don't see how one justice could, or judge

could function on the police court level.

THE CHAIRMAN: In all probability, you would have the same system only you would call him the district judge instead of the trial magistrate.

MR. MARTINEAU: This is going to be left to the Legislature, and I think there is one thing we can be confident of. The Legislature is not going to create fewer judgeships than the people of these various jurisdictions think is necessary. If anything, they go too far the other way to create too many.

MRS. FREEDLANDER: Mr. Chairman, are all four levels of the proposed unified system courts of record as of now, for instance, in Baltimore City, the Municipal Court and People's Court are not courts of record. Are they going to be courts of record?

MR. MARTINEAU: We have not specifically said whether they are courts of record or not. I don't think there is any doubt that the Superior Court will be a court of record as required by the Legislature. What the District Court will be, I am not certain; and we did not think it necessary to write into the Constitution whether

or not the particular court would be a court of record.

MRS. FREEDLANDER: Any reason why it wasn't written in?. You have a reason?

MR. MARTINEAU: We don't know whether the District Court should be.

THE CHAIRMAN: More specifically, I assume the answer to Mrs. Freedlander's question is, you thought it should be best left to the Legislature.

DR. BURDETTE: I have a question which goes to the first sentence of the comment on Page 13 and applies to all four levels of the court.

There is a statement by the Committee that this Statewide system would provide for the first time State maintenance and support. I like that idea very much, but I don't see it in the Constitution.

MR. MARTINEAU: You will get that.

THE CHAIRMAN: Judge Adkins?

JUDGE ADKINS: Is there to be some kind of enabling legislation proposed by some group to accompany this constitutional provision? I would hate to see this adopted and thrown to the Legislature de novo without

some substantial study. I happen to know in our own area, the Case Commission is simply wrong in its proposal. It arises in part from the fact that there was no representative from our area on the Case Committee. We have called their attention to some of our problems and they have acknowledged the fact they can be rectified.

Is there to be some kind of proposed enabling legislation in addition to this?

THE CHAIRMAN: By this Commission?

JUDGE ADKINS: Yes, by this Commission.

THE CHAIRMAN: I would hesitate to say that we are going to prepare enabling legislation to implement all the constitutional recommendations, so I would have to answer you by saying I don't know.

MR. MARTINEAU: I think here, to take that up a little bit, I think here we probably would have -- we are creating a court that doesn't now exist and wouldn't have any way of operating. I would assume, take the recommendations of the Case Committee and then make whatever changes we thought necessary. Frankly, I agree with you, Judge Adkins, the thought of one judge serving five

counties on the Eastern Shore, I find is completely --

JUDGE ADKINS: Is completely intolerable.

MR. MARTINEAU: I agree. Some proposal would have to be made by us to implement this Section; but I think we would have to start out with the basic proposal of the Case Committee and then go on from there.

MR. MILLER: There is one principle that I hope this Commission will realize in that connection, and that is while some of us are of bloody head about the principle of one vote per population disregarding geography, when you come down to administering justice, geography besides the population is a very important factor and should not be based on a population basis.

MR. MARTINEAU: I agree with you. I think that is one of the errors made in the Case Committee Report, that it added up numbers of people and decided that there was one judge required for so many number of people and didn't take into consideration the number of miles in between all those people.

MR. MILLER: In areas such as the Eastern Shore where places may be only a few miles apart and yet to go

by land, you might have to go forty miles to get from a town you can see across the river, that adds factors that population doesn't solve whatsoever.

THE CHAIRMAN: Any further question as to 5(a). If not, we will go to Section 5(b).

MR. MARTINEAU: I think we have actually covered most of this already, but I will read through it.

The District Court shall be composed of a chief judge and such number of associate judges as provided by law. The State shall be divided by law into districts. There shall be a division of the District Court for each district. A district shall consist of at least one county. If a district is composed of two or more counties, they will be contiguous, and no county shall be divided into the formation of a district. There shall not be less than one resident judge in each district.

THE CHAIRMAN: Any question? Any comment? Section 5(c).

MR. MARTINEAU: This deals with the commissioners. There may be commissioners of the District

Court in such numbers and with such qualifications as shall be provided by Rule. They shall be appointed by and serve at the pleasure of such judge of the District Court as shall be designated by Rule.

The commissioners shall be authorized to issue arrest warrants and to determine whether and in what amount bail is required. This provides, it is self-explanatory in addition to the District Court judges there shall be commissioners who are in the nature of committing magistrates whose function is to issue arrest warrants and set bail. The number of them is to be set by Rule. We feel that is essentially a part of the judicial system and should be determined by the Judiciary rather than by the Legislature.

They are to be appointed by the district, by a judge of the District Court, which judge shall be designated by Rule. Now, the appointment by the District Court judge was emphasized very strongly to us by various judges of some of the People's Courts in the counties who had a great deal of difficulty in dealing with committing magistrates over whom they had no control and no

authority, and they felt that if they were to perform their duties properly, they would have to have some control, some jurisdiction over the commissioners. This, of course, is provided by the power to hire and fire.

THE CHAIRMAN: I call your attention to the fact that this provision for commissioners does not create judges. They do not have the function of trying cases. They have only two functions, and that is to issue arrest warrants and set bail.

MR. SCANLAN: Do other States have similar commissioners acting in that capacity?

MR. MARTINEAU: I believe so.

MR. MILLER: Would that be substantially the same function as commissioners in the United States District Court?

THE CHAIRMAN: Substantially, but not identical. Any further questions?

JUDGE ADKINS: I want to go back to (b). I am seriously disturbed about this. It can be brought up at a later time, but I don't believe the Committee has fully explored the rural situation in regard to this District Court.

The People's Court judge in areas which Ted Miller and I live is a very useful, social tool; considerably more of a social tool than he is a judicial too. He serves a function as a peacemaker; somebody at the Bar Association made this very point.

MR. MARTINEAU: He held Equity Court..

JUDGE ADKINS: You can't get a man from the county forty or fifty miles away who can have the same effect in a given county as a man in that county who knows the currents in the county, and I think this concept of the District Court is pretty abstract in terms of the rural areas as I know them, and I am going to propose at least to get a record vote that the provision require that as it does with the Superior Court, if there is justification for having a Superior Court in each county, there is in my judgment substantially greater justification for having a District Court judge in each county because of the position which, the influence he has on maintaining peace and order generally in the county.

I am going to propose that this Section be

amended to provide that there shall be at least one District Court judge in each county.

MR. MILLER: I second that.

MR. MARTINEAU: May I comment on that? Judge, I think this shows the difficulties that we get involved in when we put in a provision in one section.

JUDGE ADKINS: I am willing toleave it out of the other section.

MR. MARTINEAU: We put it in there because of the strong insistence by many lawyers with whom we had meetings. We haven't put it in here. We don't feel really that it should be here. This is a situation that can be covered by law and doesn't lie in the Constitutional Convention. I would hate to have it put in this section merely because it is also in a section dealing with Superior Court.

JUDGE ADKINS: I am proposing it because I think in the proper administration of justice, these lower courts have got to be constantly present in the county, to have them travel fifty or sixty miles on circuit is not going to do the job they are supposed to do.

They are more than judges. They handle a volume of petty minor trivia that has to be handled by somebody, and a man fifty miles away can't do it, and he can't do it on a once-a-week or once-a-month or two-days-a-week basis.

MR. MARTINEAU: I do think one of the matters that was raised at the State Bar meeting this summer was that to a large extent this totally illegal Equity Court held once a week is a function that to a certain extent could be taken over by the commissioner who would be not hearing a case with a view towards making a judicial determination; but that I think it was pointed out there that most of these equity hearings, so-called, are held in connection with the issuance of warrants and that the commissioner can perform exactly the same function, in that he can have a hearing on whether he is going to issue a warrant or not; and if the people can't decide where the commissioners are going to be kept, he can issue a warrant against somebody for disturbing the peace or something.

JUDGE ADKINS: This is an oversimplification

of the problem.

THE CHAIRMAN: May I suggest that in view of the time, that we take a break for about ten minutes?

(At this time a short recess was taken.)

THE CHAIRMAN: We will resume, please.

We will resume the consideration of 5(b).

Judge Adkins, I wanted to call your attention to one thing in connection with your discussion. It poses a problem, and that is under the proposal of the Committee here the judges of the District Court would all be full time judges, so that your proposal that there be one in each county would mean one full time district judge in each county. This wasn't mentioned, but I think it is part of the problem.

Mr. Hoff?

MR. HOFF: That would be my objection to Judge Adkins' proposal. I know from experience that in our county of fifty-some thousand, we have a trial magistrate who sits, I would guess he could do all of his work very easily in two days a week or less. I would hate the thought of a $20,000 man twiddling his thumbs for about

three-fifths of the week, and it would seem to be a simple matter to share, so far as we are concerned, to share a magistrate with, let's say, Frederick County. I think the two counties could pretty well use up his time, but we don't have the work that would keep a $15,000 or $20,000 a year man busy all week long.

MR. SCANLAN: Suppose, Mr. Senator, they step up the jurisdiction of the District Court. He now has additional duties. This would then add to his work load, would it not?

MR. HOFF: Step up his duties?

MR. SCANLAN: The Legislature in the enabling act raised the jurisdiction that would, the jurisdiction of the District Court, meaning he would have far more to do than just the old trial magistrates do, and therefore he would have a longer work week. Would this partly answer you?

MR. HOFF: In our county, from personal experience, it would increase his work load some, but we still don't have enough litigation to justify a full time man on that level, and of a Circuit Court judge, too.

MRS. BOTHE: I was going to say, if you are going to step up his jurisdiction, you are going to decrease the already underworked circuit judge.

MR. SCANLAN: Because you have already yielded to the Bar in having one resident Superior Court judge.

MR. MILLER: As Judge Adkins and I have said, the Circuit Court judge is not in our opinion nearly as crucial because in my county for the last fifteen years, I guess, we have only had a resident judge now about a month or two; and we could get along without a resident judge, but I can't conceive of getting along without a resident magistrate, and Senator Hoff's example isn't, doesn't quite fit the bill.

That is a compact area. A man could spend several days in Frederick and several days in Westminster or whatever it was, but in our area, there are miles and miles, and I tell you, somebody gets arrested for speeding late at night in that community, and if they had only one county magistrate, the traveling public would have an awful problem.

Sometimes the man has to go away. He wants a

speedy trial or he loses points or maybe loses his right to drive. I think it would be a tremendous step back to have these large areas regardless of the size of the population without immediate access to the equivalent of a police court.

THE CHAIRMAN: I point out to you without intending to limit the discussion, the question is not whether there shall be a district judge in each county. The question is simply whether that shall be left to the Legislature or whether the Constitution shall require it.

MR. MILLER: Mr. Chairman, I would like to move, if Judge Adkins hasn't already done it, that we amend this provision to provide for at least one district judge in every county.

THE CHAIRMAN: That is Judge Adkins' motion. Any further discussion?

MR. CLAGETT: I have one question, Mr. Chairman. How many District Courts will embrace more than one county on the basis of present population, and let's say, the most recent projection?

MR. MARTINEAU: That is up to the Legislature.

Mr. Case's proposal was that you would have a, I believe a district wherever you had 50,000 population.

THE CHAIRMAN: That is not the proposal of this Constitution.

MR. MARTINEAU: No.

THE CHAIRMAN: The answer is, it is up to the Legislature.

MR. CLAGETT: That might be the answer insofar as the point raised by Judge Adkins and Congressman Miller.

DR. BURDETTE: Why isn't that the answer for the old Circuit Court?

GOVERNOR LANE: I think it is a bit inconsistent to write into the Constitution the phrase that we have previously discussed with reference to Superior judges and seemingly ignore the problem that Congressman Miller and Judge Adkins have been discussing or proposing, because at the lower level, there is greater difficulty insofar as the satisfaction of the public is concerned than there is in the Superior judge.

I don't see any reason if one should want it -- either put both in as we have done with the Superior

judge or take them both out and leave it up to the Legislature, bearing in mind that the future Legislatures are not going to be composed as has been our previous experience.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: I would like a little more practical elaboration on what the new role might be of the commissioners.

THE CHAIRMAN: They have two functions, that of issuring arrest warrants and considering whether to admit bail and fixing bail. That is all. That is the legal function. They may have a practical function beyond that which is what Mr. Martineau described.

MR. SAYRE: To some degree, wouldn't that take up the slack of the existing magistrates?

THE CHAIRMAN: That is the point that Mr. Martineau made earlier on the informal discussion.

JUDGE ADKINS: I know you are anxious to get on with this, and this is a matter that in a sense, from my point of view, is de novo. I don't want to push it to a vote at this time without further considering the

position that I have taken, and if Congressman Miller would agree, I would like to withdraw my motion with the understanding that we have the right to renew it at sometime after we have had a chance to make some further investigation.

THE CHAIRMAN: May I make a candid suggestion to you, then, in light of the discussion that has occurred, that the motion be that the Committee reconsider the corresponding provisions of the two sections with respect to a resident judge of the Superior Court and the lack of a provision for a resident of the District Court in each county and report back.

MR. MARTINEAU: Mr. Chairman, without wishing to disagree, I must confess on behalf of the Committee, we just as soon would have the recommendation of the Commission and move on. I don't see that this is a matter that needs any additional study. It is a question of how you feel about it more than anything else.

THE CHAIRMAN: I think, Mr. Martineau, the difference is that you and the Committee have explored this very thoroughly for a long time. Judge Adkins is

expressing his feelings about the desirability of voting one way or the other.

MRS. BOTHE: As the other half of the Committee present, I don't agree with Mr. Martineau. I think this is a problem that the Committee has not adequately considered. It came to my mind when we were first discussing the District Court, and in fact, I expressed some of feelings in writing on the subject. It has never been discussed, and I think we have a problem here that the Committee should look further into before proceeding with this four-level.

MR. SCANLAN: My curiosity has been aroused by Mr. Martineau. He said Mr. Case said a District Court judge for every 50,000, yet we gloss over the volume problem with the Superior Court and require a resident judge in each county for the Superior Court but don't require it for the other. I am not convinced on that one.

THE CHAIRMAN: Judge Adkins, you want to have your motion or take the suggestion and withdraw your original motion?

JUDGE ADKINS: It doesn't seem much point in referring it back to the Committee when the Committee Chairman states his position is very firm. So I don't want to push it now. I would like to reserve the right to push it another time after I have briefed myself on it.

THE CHAIRMAN: We can move on, then.

The question under both Sections 4 and 5 as to the Superior judge and District judge is open. Now, Section (c), we had read and were considering. Is there any further question about it, 5(c) on Page 24.

If not, we will move to Section 6.

MR. MARTINEAU: Section 6 is, well, actually Section 7, are the internal administration sections. Section 6 provides that the Chief Justice of the Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign temporarily any justice or judge of the State sitting in the court of the State. The Chief Justice of the Supreme Court shall designate one of the judges of the Appellate Court as chief judge of the Appellate Court and shall designate

one of the judges of the Superior Court as chief judge of the Superior Court and shall designate one of the judges of the District Court as chief judge of the District Court, each of whom shall serve as chief judge at the pleasure of the chief justice. The chief judge of the Appellate Court shall assist the chief justice in the administration of the Appellate Court.

The chief judge of the Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of the Superior Court shall, under the direction of the chief justice, prepare and submit to the General Assembly the budget for the judicial system. The chief judge of the District Court shall assist the chief judge of the Superior Court in the administration of the District Court.

Now this sets up a four-level administrative system which has the chief judge of the Supreme Court at the head; under him as assisting him in the administration of the Appellate Court would be the chief judge of the

court whom he will appoint and he will appoint a chief judge of the Superior Court who will have the general supervision of the entire judicial system but more particularly the trial court aspect of it, the Superior Court and the District Court and under him, he will have a chief judge of the District Court who will assist him in the administration of that court. His duties, the duties of the chief judge of the Superior Court will essentially be whatever the chief justice wants him to do. He will be, in other words, the chief justice's right-hand man.

One of the basic difficulties under the present system under which the chief judge of the Court of Appeals is designated as the administrative head of the judicial system is that he doesn't have ordinarily the time or the inclination to really be the effective administrator of the court, and he doesn't have a judge, a person with the authority and influence of a judge to assist him in carrying out his duties.

For this reason, we have provided that the, that is, assistants in this matter shall be judges who

shall be designated chief judges of their respective court. We considered at one time the making, of merely designating an individual who wouldn't have to be a judge as administrative judge who would be similar to the administrator, director of the administrative office of the courts that we now have.

Most of the judges with whom we talked felt that this was not enough, that the man who was to be the actual administrator of the judicial system had to be a man who was a trial judge who knew the problems of the courts and who could speak to the judges with the influence of someone who was a judge, a full judge or true judge and would have all the influence that would go along with it. The provision as to the chief judge of the Superior Court preparing the budget is actually somewhat similar to what we have now except that it would appear that although the Judiciary is supposed to prepare its own budget under the present system, this is disregarded completely and the, well, where they do prepare it, they must submit it to the Budget Department, and frankly, they don't know what the budget is going to look for the

judicial system until it is presented by the Governor to the Legislature. We feel that the Judiciary, as well as the coordinate branches of the Government, should be able to prepare and submit directly to the Legislature its own budget without submitting it to the Executive and then having the Executive decide what it wants the Judicial Department to have for a budget.

THE CHAIRMAN: Any questions?

Mrs. Freedlander?

MRS. FREEDLANDER: Mr. Martineau, in current literature Maryland has received a great deal of commendation for setting up an administrative office under Mr. Inverness. He has quite a bit of commendation for the work he has done. My first question relates to whether or not an administrative head would not be better. There have been good judges who have not been necessarily good administrators. I have heard comments from many States that a chief justice who is an able man, but cannot handle the people -- by stating this inthe Constitution ipso facto, the chief judge would become chief administrator, you would have more trouble than you have now.

MR. MARTINEAU: The chief judge is a chief administrator only in a figurehead way. He picks the man who will actually do the work. And we certainly anticipate that from the number of Superior Court judges we are going to have in the State that it will be relatively simple for him to find a judge who is an administrator.

The chief judge, chief justice of the Supreme Court, although he is designated as the administrative head of the judicial system, isn't going to be actually involved in the day to day administration. That is why we set it up this way, so that he can pick some judge from the State who is a good administrator and who can carry out the functions of an administrative judge. That is the kind of man we want.

MR. MILLER: You can also change it at the present time.

MR. MARTINEAU: That is right if he finds he picked the wrong man or if the man he picked doesn't like it, that can be changed from time to time.

THE CHAIRMAN: Any further question on this

Section?

Mr. Mindel?

MR. MINDEL: As I recall when the question arose at the hearing several weeks ago on this point, there seemed to be some objection on the part of several judges from at least Baltimore City and the counties in the provision which allows the assignment of, say, Superior Court judges to the District Court. As one judge said, You mean I would be selected to sit in the Housing Court, and his thought was that you would be downgrading instead of upgrading. What was the upshot of that? You will still have the provision in.

MR. MARTINEAU: First of all, we didn't think that was going to happen very often, if at all. It is going to be enough work for the judges in the Superior Court to do, that they are not going to have time to sit in the Housing Court.

I think the chief justice, in assigning judges around the State, is certainly going to take that into consideration. However, there may be occasions when this is going to be necessary, such as I think one of the

solutions to the problem, in a county where there isn't a judge of the District Court and we need one, is that the judge of the Superior Court of that county can have a sort of floating assignment to the District Court so that he can sit as the District Court judge whenever necessary for him to do so. This just provides a flexibility. Frankly, I don't agree with this idea that a judge is somehow downgraded by having to sit on a lower court, because the Chief Justice of the Supreme Court asks him to do it. I don't think a man gains or loses stature through that. Of course, they can also be, I think at the same time everyone ought to realize that the judges who oppose being told they have to sit on the lower court didn't have any objection at all to being told they can sit on the higher court; and I think the criticism is worth that much.

DR. BURDETTE: My query relates to the same subject. I have already heard from some of the judges different points, and they really didn't want to be judges if they had to move from Prince Georges County to Alleghany County on a week's notice, but that you say

may not happen. That might be taken into consideration.

My real question is on Paragraph 1 of Section 6 where I am a little disturbed by the possibility of affecting the attendance in the Supreme Court and thereby the voting results in the court. The earlier part of the Constitution, the quorum is fixed at four. I should think that a chief justice, I could conceive from reading the correspondence of Mr. Chief Justice Taft, might decide that accumulative members of the court, it is a critical case and better be assigned to the Superior Court out in the western part of the State, and everybody would deny up and down that would happen, but I guess I don't like the looks of the power of the chief justice to get rid of accumulative votes or even one vote in the Supreme Court.

MR. MARTINEAU: To me, the answer to it is that he has that power right now, and I have never heard of any problem being raised. It wouldn't be very difficult if someone wants to play the game in an improper manner, whether he has the power to assign the justice or judge or not isn't going to keep him from abusing that authority.

I don't think we can write a Constitution dealing with the Judiciary and dealing with the administrative power of the judge on the assumption that there is going to be an abuse of that power. If we did that, we shouldn't give any power to anybody and just make every judge independent as he is now, and nobody can tell him where to move.

DR. BURDETTE: That is not an adequate answer to it, and I don't believe what appeared in the American Political Review in December of 1965 about the power and the Court of Appeals, that what it actually boiled down to, that at least in some cases, and this turned over to some judge and nobody ever reads it, and whatever he says, that is the way they go; and that describes the inconsistency of it. I hope our courts don't operate that way.

MR. SCANLAN: What has that to do with your proposition?

DR. BURDETTE: It might be a situation of the power of the chief justice which isn't employed, but you see that runs to the angle that not all the judges

put their minds to the cases anyhow according to the article, but I think the effort should be made that they should do so. We have the same thing in the Supreme Court of the United States, of course. Wouldn't you think, as an actual, practicing lawyer, see I am not, that justice could successfully say, I will not absent myself from this case because I intend to sit there. I think this is almost imperative to the proper justice, the administration of justice.

MR. SCANLAN: What is imperative?

DR. BURDETTE: That the justice would have the right to vote on a case, and actually be given the time to attend to their duty instead of being transferred.

MR. SCANLAN: Even temporarily?

DR. BURDETTE: Even when that would affect the business of the court to which they were assigned by appointment or election.

THE CHAIRMAN: I am not sure I understand your suggestion. Is it that the chief justice's power of assignment should be subject to veto of the individual judge? Is that what you are saying, in effect?

DR. BURDETTE: I am saying, in effect, that I think maybe the language was too strong.

MR. MARTINEAU: I don't see how you can weaken it unless youtake away the power.

THE CHAIRMAN: It seems to me there are only three alternatives, either the chief judge has it as he has it today, or the court has it, or you are going to give each individual judge the veto.

DR. BURDETTE: I would suppose I'd be inclined to put it to the court. But it may not be a problem at all. Is that the experience of the Bar?

THE CHAIRMAN: It hasn't been, certainly.

MR. MILLER: I can say that after forty-some years of practice, and I have known strong judges, weak judges, some that I admired more than others, but I can't conceive of a chief justice of this State sending a colleague out to Cumberland or to wherever it might be against his will. I have just never known such a judge. Have you, Governor?

GOVERNOR LANE: I think a problem of that kind where you force someone to do something that they are

diametrically opposed to, you could question his ability to carry out your instructions. And that would possibly run in the direction of his being fit for the job.

MR. CLAGETT: That is exactly the point, and I think it might warrant taking another look at Section 13 on Page 11, dealing with the removal of judges.

THE CHAIRMAN: You don't mean Page 11; on back of the text, you mean.

MR. CLAGETT: Yes, sir, and I don't see any provision in here for the removal of the chief justice of the Supreme Court. I do think that we ought to have that protection.

THE CHAIRMAN: You mean, removal as chief justice, or as a justice at all?

MR. CLAGETT: Removal as chief justice.

MR. MARTINEAU: He would have to be removed as a justice, which would automatically remove him as chief justice.

MR. CLAGETT: You might not even want to do that.

MR. MARTINEAU: If he has so abused his power

as chief justice, I can hardly think he would want to think you would want to keep him on as chief justice. He should be removed.

MR. CLAGETT: He might have a heart attack and not be able to meet the responsibilities and functions of chief justice but still could carry on the duties of a justice of that court.

MR. MARTINEAU: If he did that, one of the amendments Larry and I put on here the other night, something we had not considered before, was to permit a chief justice to voluntarily resign as chief justice without resigning as a justice of the Supreme Court, and we are going to submit that as an amendment to the Section under Chief Justice.

MR. CLAGETT: I think that covers one part of it.

THE CHAIRMAN: Let's not get into a detailed discussion of that Section until we get to it.

Did you want to make a motion with respect to your point?

DR. BURDETTE: No, I am not raising a question.

I think the question is different. From my point of view, if the Supreme Court has any business to do, all the justices ought to be there attending to it unless they are kept apart from it by illness or other incapacity and that nothing should be done which would take them out of the business of the court.

MR. SCANLAN: Except situations might occur where the administration of justice on the trial level in a certain area of the State requires the presence of additional judges to clean up the logjam that is affecting the administration of justice, in which case the chief judge would have to weigh whether the loss of one of his men temporarily to clean up that situation was a greater impediment and disadvantage to the administration of justice than sending him. Then you just have to place your faith in the chief justice that he would make an intelligent decision if the situation arose. And he can't keep him there forever since it says, temporarily.

THE CHAIRMAN: Or a member of the Supreme Court might be disqualified in a case or series of cases and hence not be able to sit, and he should be utilized

in some other judicial function.

Any further discussion of Section 6? I am troubled by one sentence which I hadn't known went so far as it does, and I would like to tag this and hold it for consideration of the Committee on Finance and Taxation, because I think it may conflict with their provisions.

That is the next to the last sentence. The chief judge of the Superior Court shall, under the direction of the chief justice, prepare and submit to the General Assembly the budget for the judicial system. I disagree with the statement that the present Constitution is not being observed in this regard, but in any event, I think the question here is a budgetary question rather than the judicial one, and I would like to ask that you consult with the Committee on Finance and Taxation and make sure we don't end up with inconsistent provisions.

DR. BURDETTE: If I may, I would like to express the view that I should like to vote against that sentence whenever it becomes appropriate to do so.

MR. MARTINEAU: If I may read to the Commission;

in Article 3, Section 52, Subsection 11, provides this: The budget for the Legislative Department certified by the presiding officer of each house of the Judiciary as provided by law, certified by the Comptroller for the public schools, as provided by law shall be transmitted to the Governor in such form and at such times as he shall direct and shall be included in the budget without revision.

And Mr. Inverness tells us, in Subsection 12, the Governor in preparing the budget says after such public hearings, he may in his discretion revise all except for the Legislative and Judiciary Departments and for the public schools as provided by law. Mr. Inverness tells us that he is the person designated by the chief judge of the Court of Appeals to present the budget of the Judiciary Department to the Governor, in effect to the Budget Bureau, and he submits it, and they say, Thank you very much, we will consider it and then the next time they hear about it is when the budget is presented to the General Assembly and oftentimes substantial changes are made in the budget as proposed by the Judiciary

Department.

THE CHAIRMAN: But not in any provisions quoting from Paragraph 11 for the Judiciary as provided by law and that has been the construction given the same phrases in the other provisions. It is only the provisions provided by law with respect to salaries provided by law and so forth that aren't changed.

But I am not suggesting that we decide this question. I am merely suggesting that we not have a conflict with the Finance Committee's budget provision which is coming in at the next meeting.

Section 7 is tied in very closely with Section 6, particularly as far as the administration of the Judicial Department is concerned. This concerns the rule making power of the Supreme Court.

The Supreme Court by Rule and the General Assembly by law, shall have concurrent power to prescribe regulations governing the practice and procedure in the courts of the State and governing the admission of persons to practice before the courts of the State and the discipline of persons admitted. In the event of

conflict between such a rule and any provision of any act of the General Assembly, the Rule, if adopted or re-adopted after the passage of such act, shall be paramount. Administration of the courts of the State shall be governed by Rule. Rule as used in this Article means a rule adopted by the Supreme Court.

Now, this, in the first part, gives the Supreme Court much the same authority that it now has to govern practice and procedure and governing admission of persons to practice before the courts of the State and the discipline of members of the Bar. It is a little different in the provision with respect to conflict between a Rule and an act of the General Assembly. This provides that the Rule, if adopted, or readopted after the passage of an act shall be paramount. This, however, doesn't mean that the Legislature can't come back and pass another act which would then supersede the Rule which would then permit the court to come back. You do have, you can go on and on forever.

This isn't, we don't feel, is any substantial problem. The same similar provision has existed in and

under the present Constitution, and the court and the Legislature have always been able to work out an accommodation on this, and there really isn't any problem. Now, the Legislature is not given the same authority over administration of the courts of the State, and we feel that this inherently should be in the courts.

Now, what we mean by administration of the courts is explained in the comment. The comment is rather confusing, and frankly, the way it was presented to the, or put in the Report, it came out in a very garbled way, but what we are concerned with here is governing the time that the court shall be open, where they shall sit, when judges can take vacations, and all similar matters concerning the internal administration of the Judicial Department.

JUDGE ADKINS: A question. Did the Committee consider the possibility of investigating the rule making power in the Supreme Court in lieu of the General Assembly in rule making?

MR. MARTINEAU: Yes.

JUDGE ADKINS: What is the advantage of having

it concurrent?

MR. MARTINEAU: So far as we were aware of, the present system in which the power is concurrent has worked well, and there was no feeling by anyone that it should be changed.

JUDGE ADKINS: Was this discussed with the Chairman of the Rules Committee?

MR. MARTINEAU: I don't believe it was.

JUDGE ADKINS: Judge Gray.

MR. MARTINEAU: No, it wasn't.

MR. RODOWSKY: One reason for it is this: In the area of uniform laws that would be enacted by the General Assembly, they not only deal with matters of substantive law they embody in the uniform laws, but matters of general procedure. It was felt rather than try to tear these statutes apart and cover parts by ruling and only the substantive parts to remain in the statute was just an unnecessary something that has worked well.

MR. SCANLAN: You are talking about a system that worked well when the chief judge of the Court of

Appeals was not the dominant judicial officer of the State. Under this Constitution, he will have very broad powers, and if he is a strong willed man like Arthur Vanderbilt of the New Jersey court, he can soon mold the judicial system the way he wants it.

You present a situation where the court under the direction of a firm, vigorous chief justice could abuse its rule making powers to effect substantive law, and I would prefer in the first instance to give him all the rule making power provided that any such rule could be changed and altered by a vote of two-thirds or three-fifths of the members of each house.

I would like to see some restriction against the abuse, possible abuse by a strong chief justice in the future of his power over the courts, the budget, the rule making power. He would be a powerful public official and ask any judge who served under Arthur Vanderbilt how powerful he became with a similar power. There should be some check that the representatives of the people should have on the Judiciary.

MR. MARTINEAU: Don't you think we have that

in this.

MR. SCANLAN: They pass an act; the court passes a rule, I don't particularly like that.

MR. MARTINEAU: But you do have a serious question, it seems to me, as to where you want the leapfrogging to stop and I am not sure that we want to say, sit here and say it should stop with the court or stop with the Legislature. This is, it seems to me, something that is going to work itself out when everybody realizes that each party has, the other side has the power to go ahead and do something contrary to what they want and to say that either the court should have the final say or the Legislature should have the final say, I am not sure.

I can imagine circumstances where you would want to have one and others where you would want to have the other. I would rather leave it like this.

MR. SCANLAN: The leapfrog situation you have in effect said that the court will have the final say. The administration of the courts of this day shall be governed by rule. There was no check. Their power was

unrestrained, unreviewable. Why can't there be some check on this by a powerful chief justice in the future by providing some restriction?

MR. MARTINEAU: You are going to assume he would have such influence over the entire court that he can tell the court, This is the rule I want, and therefore you adopt it?

MR. SCANLAN: I have some familiarity with the New Jersey experience, and where you have the powerful personality invested with this power, it is amazing how the court will sniffle when he sneezes.

MR. MARTINEAU: How is most of his power going to come through the power that he has under the rules adopted by the court? He is not going to start out with that. Section 6 does not give the chief judge actually any more authority than he has under our present Constitution.

THE CHAIRMAN: Mr. Sayre?

MR. SAYRE: Just prior to leaving, Mr. Bond asked me to express his opinion on this one point, and he called my attention to the model constitutional

comment here, To guard against untrammeled judicial rule making such as any possible rule to invade the substantive law the Legislature is granted authority to change by special majority.

He was concerned about the possibility of judicial arbitrariness, and I know the Committee is getting involved in the final composition, different from even what it was in the last draft, and this approach, I am not making a motion or anything, but it might be with some approval that the Supreme Court shall have the power to subscribe rules, I don't mean to have all the words in here, Rules of Evidence, the Supreme Court shall by rule govern admission to the Bar, and so forth. The General Assembly shall have the power to make rules, to repeal any rule of the Supreme Court or to substitute a new rule or rules provided that such legislation shall require the approval of two-thirds of those present and voting in each house and with approval of the Governor. It is further provided that legislation of the General Assembly shall not be superseded by any rules of the Supreme Court until a period of two years has elapsed.

So you would have to have intervals of two years before there could be any leapfrogging.

THE CHAIRMAN: I call your attention to the fact that the rules under this proposal are limited to rules governing practice and procedure, and there is a considerable body of opinion to the effect that courts have inherent power to regulate their practice and procedure in any event.

When you are talking practice and procedure, you are talking about such things as the time when you must file a complaint and whether the complaint should be divided into sections or paragraphs and whether the paper should be 13 inches long or 11 inches long and whether you must file an answer in ten days or twenty days, and whether you have a panel of twenty names to pick a jury of 12 or a larger panel and all the numerous details of this sort.

MR. SAYRE: Wouldn't the Legislature have certain practical bounds on itself? It wouldn't enter in the length of paper and things of that sort.

THE CHAIRMAN: I am not doing anything except

pointing out for the benefit of the laymen what is meant by the term, practice and procedure. You are not talking about the rule making power establishing laws on substantive matters, but only on procedural matters.

MR. MARTINEAU: I was just going to say, the Legislature can sometimes get into the details of procedure such as in the adoption of the Uniform Commercial Code where they do prescribe certain forms and things and papers that have been filed in the clerk's office.

So you can have both parties actually interested and legitimately so in the various aspects of procedure.

THE CHAIRMAN: Any further question or comment on Section 7?

DR. BURDETTE: I should like to support Mr. Scanlan's position and Mr. Sayre on behalf of Mr. Bond for an ultimate review really on the principle I sometimes speak for that in the long run, the Judicial Branch of the Government should not be the exclusive authority.

THE CHAIRMAN: We will have to have one or the other to resolve this finally, and I am not sure from your suggestion what you are suggesting.

DR. BURDETTE: I am suggesting it be in the Legislature, by a plurality of the special majority.

THE CHAIRMAN: Is this in the form of a majority?

DR. BURDETTE: No.

MR. SCANLAN: I second it.

THE CHAIRMAN: He said No.

MR. SCANLAN: I make a motion that the Committee be directed to consider placing a limitation on the rule making power of the court upon a greater than majority vote, say a two-thirds vote or three-fifths vote as a statement of principle that should be incorporated in here by appropriate language.

MR. MARTINEAU: Rule making power.

MR. SCANLAN: I would prefer to see it. It is complicated by the fact.

THE CHAIRMAN: No, no; his question means, are you relating it to the power to regulate the administration of the court or the powers, practices and procedure?

MR. SCANLAN: I would prefer it to be directed to all but you have the peculiar background of the statute,

and maybe it would do more harm than good to upset that, so I would rest with a restriction on the rule making power to administer the courts. In other words, there should be some restriction there.

JUDGE ADKINS: Not related to practice and procedure.

MR. SCANLAN: No, there you have the leapfrogging thing which I suppose will protect.

THE CHAIRMAN: Is there a second?

MR. SAYRE: I second.

MR. MARTINEAU: I ask, would you submit that on the basis of having everything covered by the leapfrog -- if you are satisfied with the leapfrog in 1 and 2.

MR. SCANLAN: Your point being that if the administration of the courts of this State shall be governed by a rule that that, too, is subject to statute.

MR. MARTINEAU: Just move the language up.

MR. SCANLAN: I guess that would accommodate it. I dislike this whole Section. It could lead to

unseemly conduct between the two branches of government sometime in the future. Judge Adkins was on the best track when he raised this suggestion. He said, Why not give the courts the rule making power and have the check of two-thirds of the Legislature. You may have a conflict in the future between a strong court and a strong Legislature.

THE CHAIRMAN: I am completely lost now as to what your motion is.

MR. SCANLAN: I will withdraw my motion and start over and move that the Committee be directed to restudy and rewrite Section 7 so as to invest the rule making power whether it relate to practice, procedure, admission of persons to the Bar, disciplining thereof, or administration of the courts in the court itself except that any such rule may be changed by a vote of two-thirds of the members of each house of the General Assembly.

THE CHAIRMAN: Is there a second?

MR. GENTRY: Second.

MRS. BOTHE: There are problems in here which

we discussed in our Committee. As you well know, some of these model uniform acts, a great many matters which are procedural, are initiated in the Legislature, whether adoption as one of the examples we discussed in the Committee, who has to sign the adoption paper, whether consent of both parents is needed, et cetera.

These are gray areas which involve both procedural and substantive law. There is no reason why the Court of Appeals should have to act first before the Legislature is able to, and you would create this anomaly which would hobble the Legislature from making legislation if you wrote the words so as to be primarily initiated by the Court of Appeals.

THE CHAIRMAN: Would you modify your motion to provide that the Committee be directed to restudy the Section and draft a section which would read, In the Legislature the ultimate power by two-thirds vote of each house to overrule any rule dealing with practice, procedure, admission to practice, discipline of persons admitted or administration of the court?

MR. SCANLAN: Yes.

THE CHAIRMAN: That meets your point also, Mrs. Bothe.

MRS. BOTHE: Yes.

MR. MARTINEAU: You are implying the Legislature would have the authority to do this.

THE CHAIRMAN: I am implying that in the first instance the two bodies --

MRS. BOTHE: Simply the Legislature would have last say.

THE CHAIRMAN: Would you accept the amendment, Mr. Burdette?

DR. BURDETTE: Certainly I would.

MRS. BOTHE: It would meet my objection, but I wouldn't agree.

THE CHAIRMAN: Is there any further discussion? The question arises now on the motion to recommit Section 7 to the Committee with instructions to rephrase it so as to provide that the final say as to rules governing practice and procedure, admission of persons to practice, and discipline of persons admitted and administration of the courts, should be in the Legislature by a

two-thirds vote of each house.

DR. BURDETTE: That carries a certain inference that the Legislature, I don't think Mr. Scanlan was thinking that the Legislature would necessarily have to review it. This is a check in case there was a public complaint.

THE CHAIRMAN: I think everybody understands it. You ready for the question? Those in favor, please signify by a show of hands. Contrary. The motion seems to have carried 8 to 7.

Any further discussion of Section 7?

Section 8.

MR. MARTINEAU: The Section as it is proposed here states that, The Governor shall designate one of the chief justices of the Supreme Court as chief justice to serve as such for the balance of his service on the court. During any vacancy in the office of chief justice or during any period when the chief justice may be unable to serve as determined by the Supreme Court, all powers and duties of the office of chief justice shall devolve upon the assiciate justice senior in service on the

Supreme Court.

One suggestion we have to change this is to insert at the end of the first sentence, Or until he resigns the office of chief justice, which would permit a man who has been designated chief justice to resign that office without resigning from the court. My recollection was that we had discussed that and had approval, but somehow didn't wind up.

MRS. BOTHE: I don't recall it, but I wouldn't object.

THE CHAIRMAN: So the record will be clear, state it again. At the end of the first sentence, add --

MR. MARTINEAU: Or until he resigns the office of chief justice.

THE CHAIRMAN: Go ahead.

MR. MARTINEAU: We have provided here for the Governor to designate one of the justices as chief justice. Other States, it is done either by the court or on the basis of seniority. On the seniority basis, there is some argument that the court should appoint a chief justice from its members. This is something that can be

argued either way. We have selected the Governor because that is the way it is done now. We have also provided that in the event there is a vacancy in the office of chief justice or where the chief justice is unable to serve and this is to be determined by the Supreme Court, in other words, where for some reason cannot exercise his functions whether he is sick or for some other reason, perhaps just out of the county, all powers and duties of the office will devolve upon the senior associate justice, and of course, the other one is when there is a vacancy.

We assume the justice will not exercise the authority without the approval of the Supreme Court.

DR. BURDETTE: Mr. Chairman, why wouldn't the principle of the seniority be bad from the technical point? Suppose the senior associate justice was in the hospital. Why shouldn't the court determine who would act as chief justice among its membership?

MR. MARTINEAU: Well, first of all, we thought it rather unlikely that both the chief justice and the senior associate justice would be unavailable. You

could, I suppose, just as well have the court designate someone, but there is no real reason to do that. You provide in here for someone who is going to automatically do it. You wouldn't have to have a meeting of the court. If the chief justice should die, it would be incumbent upon somebody, one of the judges, to call the court back in power. You might have a vacuum in power.

JUDGE ADKINS: You also have six judges who want to be chief justice.

MR. CLAGETT: Very interesting.

MR. MILLER: During the absence or any vacancy in the office of chief justice, I just want to be clear, suppose the chief justice dies, there is a vacancy. It isn't clear in my mind whether or not under this wording whether the senior judge wouldn't automatically become chief judge.

MR. MARTINEAU: It says, powers and duties of the office devolve upon the senior associate judge. The office itself does not, and of course, it says the Governor shall designate one of the justices to be chief justice.

MR. MILLER: Why is there any need, then, of

having it devolve? Why wouldn't the Governor automatically name the chief justice and then go from there?

THE CHAIRMAN: Because you have a hiatus.

MR. MARTINEAU: He may not be available. The Governor may not be available to do it. He may be on vacation or something. He may not want to do it for a while.

THE CHAIRMAN: You have the situation very frequently. The Supreme Bench of Baltimore City was acting under the supervision by a chief justice elected by the other judges this summer until the new chief justice was appointed by the Governor.

DR. BURDETTE: It might be the senior one who, I hate to say it, they may not regard him to be capable of being chief justice.

MR. MARTINEAU: It is only an interim thing. You are not talking about him being in office for a long time.

DR. BURDETTE: The chief justice might be sick for a year or two.

MR. MILLER: Why not let the court decide who

would be the presiding officer as long as the Governor could step in and appoint the junior member if he wanted to?

MR. MARTINEAU: You would have to have a meeting of the court before that could be done. We felt it best to designate who it was here.

MR. MILLER: I think it might be a little room misunderstanding.

MR. RODOWSKY: There are two points. The automatic evolution stops the point of the court not convening, but the power to assign is the power of the office of the chief justice which can affect the jurisdiction to decide a case of somebody who is assigned by somebody other than through his regular court in the interim before the whole court could convene to elect an interim chief justice.

The other aspect is that the Governor may want to wait to make his designation until the vacancy created by the death of the chief justice is filled.

MR. MILLER: I follow you, and I don't disagree with you, yet it is not clear from this language,

once the senior judge succeeds, he could be replaced.

MR. GENTRY: We put undue pressure on the Governor to allow the court to elect a successor even on an active basis, because that would be pushing the Governor in the position of selecting the same man.

THE CHAIRMAN: Didn't operate that way with the Supreme Bench this summer.

MR. GENTRY: Sorry.

THE CHAIRMAN: Any further discussion of this Section? If not, I am going to ask the indulgence of the Commission to go back to Section 7, because I think I failed in one respect here, with respect to this Section. I would, in view of the closeness of the vote, 8 to 7, the fact that they did not have the full Commission, I should probably have made a statement and then make this request.

I served the Rules Committee of the Court of Appeals in Maryland for thirteen and a half years from the time it was first formed, and I have some firsthand experience with the problem that arose in this connection. The bond amendment gave the Legislature the authority to

repeal the rules. What happened on two occasions, one, the first I think in the second year of existence of the Committee which was in 1946 and the other about five or six years later, a member of the Bar who is also a member of the Legislature was extremely irritated by the rule, a particular rule adopted by the Court of Appeals, and he had a bill introduced which had the effect of changing the rule. This went through very quickly on one of these legislative courtesy propositions which they so often do and the entire system of creating a set of rules of practice for the State of Maryland was in jeopardy right then and there; and if it had not been for the persuasive powers of Judge Leonard Bailey of the Eastern Shore who personally went to at least a third of the members of the Legislature and discussed this with them, I think the whole effort of the Maryland Court of Appeals and the Rules Committee to promulgate the rules of practice which we now have would have failed.

The second time the attempt was made, the process of persuading the Legislature that this was unwise was much less difficult, but even here it again

happened, and the Committee designated a committee to wait on the legislative committee and the whole matter was thoroughly discussed, including the problem of who in this field should have the final say. And I must say it was discussed on a rather high level without any acrimony or anything of the sort.

In that particular situation, the Legislature receded, and the bill never came out of the Committee. I understand there have been three or four subsequent efforts each one of which has died in committee with very little effort of the Rules Committee, merely a letter from Fred Inverness or Judge Gray that the amendment died after consideration by the Bar and so forth.

I make this statement in theory that it is easy to suppose the doctrine that the Legislature and not the court should be supreme in this area. I am not so sure in practice this is true. I am not suggesting we take another vote at this time. I am merely suggesting that the Commission consider the matter as one style to be discussed, and let the Committee come back with a recommendation on the proposal that was suggested by

Mr. Scanlan.

MR. SCANLAN: Yes.

MR. MILLER: May I interject semi-facetiously that were that occasion to occur again, that you just spoke of, Judge Bailey in the newly apportioned Legislature would not be able to block it.

THE CHAIRMAN: Well, actually, I don't think Judge Bailey's success was due to the fact that he was able to get Eastern Shore votes behind him. If you knew him, I think this was a tribute to his own fairness in being able to persuade the Legislature they were doing something unwise. Let's move on to Section 9.

MR. MARTINEAU: Section 9 gets us into the question of selection of judges. The first paragraph, A(1) provides for how appointments are to be made.

It states, Upon the occurrence of a vacancy in a judicial office of fixed term, the governor shall appoint one of not less than two nor more than five qualified persons who shall be nominated for such vacancy by a judicial nominating commission as hereinafter provided. A judicial nominating commission shall make the

nominations for such a vacancy not more than 30 days prior to nor more than 60 days after the occurrence of such a vacancy. In the event the Governor fails to appoint one of the persons so nominated within 60 days of being advised of the list of nominees, the Governor's power to fill the vacancy shall cease and the chief justice of the Supreme Court shall appoint one of the persons so nominated.

Now, this is, of course, the first half of the Judicial Selection Plan which is known as the A.B.A. Plan, the Missouri Plan, the American Society Plan, the Gail's Plan, and in Maryland, the Niles Plan. It provides that the Governor is not unrestricted in judicial appointments, but can only appoint from a laymen's list nominated from a laymen's nominating commission. The number two to five is put in there to permit flexibility, depending on the area of the State for which the vacancy exists where in small counties you may not have many lawyers who are competent to be nominated, and you only want to submit two names; and in larger areas it may be easier to get by with qualified people. Of course, the limitations

on the nominating commissions for making the nominations within a certain period of time are self-explanatory. There is no special magic in the numbers. But some number has to be picked, and these are the numbers that are ordinarily selected in this type of nominating commission proposal.

Providing for the chief justice to fill or to make the appointment if the Governor fails to do so within 60 days is perhaps somewhat unusual. We make it strictly as a strongarm measure to make the Governor make the appointment. I frankly don't ever envision the Governor refusing to make the appointment and having the chief justice ever exercise the power.

We provide in here that the Governor's power shall cease after 60 days rather than just providing that after 60 days the chief justice shall make the appointment so as to prevent there being any problem with the Governor on the 61st day making the appointment and then having some squabble between the chief justice and the Governor as to whose appointment is actually a member of the court. The history of this type of judicial

selection proposal goes back to 1941 when it was first proposed by the American Jury Society. It has been, it is included in the A.B.A. Model Judicial Article and was actually approved in principle by the A.B.A. back in 1937. Missouri was the first State to adopt the Plan in 1946, and since then has been adopted in Alaska, there are a list of States here -- certain cities in other States -- it would be voted upon this fall by the voters in Vermont and North Dakota and in the two most recent constitutional revisions that have been proposed, one in Kentucky, and one in Florida, this type of appointment procedure has been recommended. It is a system that also has been endorsed by the State Bar Association after a long study and after long debates of the State Bar Association meetings and is, so far as I know, one of the most thoroughly studied and most thoroughly investigated plans for judicial selection that has ever been considered.

The Committee feels that this system would be infinitely better than the present system. The difficulties with the present system, I think I don't have to relate. Anyone who has watched the appointment of judges

over the past 20 years, I think, is well aware of the difficulties, and we believe that this procedure is the best one for the State and should be adopted.

THE CHAIRMAN: Any questions on Section 9A(1) Any comment? 9A(2).

MR. MARTINEAU: 9A(2) establishes the nominating commission for the Supreme Court and for the Appellate Court. We get into a paramount of detail here, but we believe it is appropriate when you are talking about something as important as this, it provides there shall be a nominating commission composed of thirteen persons, six lawyers, six laymen, and the chief justice of the Supreme Court, and it provides for the terms of the non-judicial members to be four terms. We contemplate the terms of the original members will be staggered so that after the terms of, I guess three members will expire each year, and it will be filled each year so that there is a constant turnover on the commission. We, in a later Section provide that the lawyer members would be elected by the lawyers of the State, and the lay persons will be selected by the Governor. Now, one thing that just

occurred to me that we don't put in here and that is any residency requirement for either of these or any of these members. I would suppose that if we wind up with appellate judicial circuits, you would have to tie it to the appellate judicial circuits.

THE CHAIRMAN: Any questions on Section 9A(2)?

MR. GENTRY: I have one question. Suppose the office of chief justice is vacant at the time? It is his vacancy that is to be filled. He is to be a member of a nominating committee.

MR. MARTINEAU: Well, the powers and duties of the office.

MR. GENTRY: Powers and duties, but you said the office didn't evolve.

THE CHAIRMAN: I don't think the question is quite what you mean.

MR. MARTINEAU: I don't understand.

THE CHAIRMAN: He wouldn't be appointing a chief justice. He would be appointing an associate justice so that if the office became vacant, the Governor would fill it.

MRS. BOTHE: He couldn't wait until after it were filled in order to make his appointment?

MR. MARTINEAU: Not if he wanted to have his man sitting on the nominating commission. He would have to appoint someone as chief justice prior to the filling of the vacancy; otherwise, the senior associate judge would sit as the member of the commission.

THE CHAIRMAN: I think the more pertinent point would be, Mr. Gentry, that the chief justice might be incapacitated and the senior justice would then be the acting chief justice, but not the chief justice.

MR. GENTRY: We said before he is not to be designated chief justice. He has some duties.

THE CHAIRMAN: This would be cleared up by saying, one of whom shall be chief justice or acting chief justice.

MR. RODOWSKY: This is a power of the chief justice. I think the language of the subsection would cover it.

MR. MARTINEAU: One of the powers and duties of the office, as I look at it, would be to sit as a

member of the commission.

THE CHAIRMAN: Any further question?

JUDGE ADKINS: I have a concern, but I don't know how to put it in the form of a question. I have to relate what Dr. Jenkins called the minority party, the Republicans. I think there would never be another Republican judge in Maryland. Now, this may be good, but if you analyze this provision particularly with the carryover provision in the nominating commissions, let's assume for the sake of argument that a Republican governor is elected immediately following a Democrat. At no time during his term will he have the right to appoint to the commission such Republicans to balance what may be an imbalance on party designation on the nominating commission.

By the same token, the nominating commission assuming its complexion is of one party, will tend at a time that a man of the opposite party is in the governorship to nominate only members of their own party. At least, they could tend to do it. The net effect of this, if my chain of circumstances were to follow, would be

that a minority party electing the Governor only as we occasionally do in this State, would never have a chance to elect a member of his own party to the Judiciary. I frankly don't have an answer to it, but I do think it is more than just a casual concern, and I don't think it is one that can be brushed aside by saying that this is an insult to the integrity of the nominating commission.

The nominating commission will be human and think in terms of political designation. Certainly, the Governor will think in terms of political designation. Have you cured this problem?

MR. MARTINEAU: Yes, we certainly have. I would have two comments. First of all, during any term of office, the Governor will appoint all of the laymen of the commission so that although you may have, if all the lay members are Republicans, if all the lawyers are Democrats, and you assume the judge is a Democrat, you won't ever obtain a majority but you can come pretty close.

JUDGE ADKINS: I don't see how you can say that the Governor will appoint all members of the commission

in one term and they will rotate every four years.

MR. MARTINEAU: The terms will be staggered so that so many will expire each year and during the course of four years, the course of all will expire.

JUDGE ADKINS: Let's assume they are staggered at one-third. That means that two will be appointed every two years. That still leaves you with six plus four.

MR. MARTINEAU: My idea of staggering is that you would provide we have four-year terms, you would have so many expiring each year so that the end of four years, all of the terms would have expired.

THE CHAIRMAN: Judge Adkins, I think the confusion comes about because Mr. Martineau is thinking in terms of twelve people. You are thinking in terms of six, so he is thinking in terms of twelve, three go out each year, and it may be two laymen and two lawyers, but in each year there would be three persons whose term would expire. Now, during the course of the four years, that doesn't mean that the Governor necessarily would appoint four. Well, I suppose he would appoint --

MR. MARTINEAU: Appoint six may mean during the course of four years.

JUDGE ADKINS: But he would have to wait until the last year of his term to get a sufficient representation on the commission if politics were given any consideration.

MR. MARTINEAU: I think we have come as close as we possibly can by getting six Republicans on there in a four-year term. The other consideration is that in those States that have this and particularly Missouri, which has had this since 1940, the experience that has developed, and I think it is a very good one that the governors now have gotten away from the strictly party line appointment and --

JUDGE ADKINS: Taken them 26 years to do it.

MR. MARTINEAU: No, but that is the situation now. It is something that the first two governors under the Missouri system didn't follow that procedure, but it has been followed since the late 1940's, and the governors, whether they be Republican or Democrat, appoint about an equal number of representatives of both

parties.

JUDGE ADKINS: Did you give any consideration to requiring that the gubernatorial appointments to the commission should be bipartisan or split 3-2 or 2-3?

MR. MARTINEAU: I think our Committee has. I do know that we went into this in great detail on the State Bar Association Committee that originally drafted this proposal, and I think it was the unanimous feeling of that Committee that requiring bipartisanship on the commissions is illusory at best. If the Governor is interested in getting people on the commission who are going to follow his desires, it is not very hard to find a registered Republican who will go along with him, and I don't think it offers any protection at all to the minority party.

JUDGE ADKINS: It does to this extent: A governor might find, for lack of a better word I will say it soft, Republican, who goes along with the governor who appointed him, but in the term of the next governor, he might become a strong Republican. This is the problem I am concerned with.

MR. MARTINEAU: Possibly, I think the whole

philosophy of the Commission is not that it is bipartisan but that it is nonpartisan, and this is the procedure that has worked in other States, and I would hope it would do so here, and I frankly would dislike very much writing into the Commission's proposal an outright recognition of the fact that not only, not that politics shouldn't play a part, but that politics should play a part in this.

When I say politics, I mean party politics, and I don't think they should, and I don't think it should be in here.

JUDGE ADKINS: I don't think it should, either.

THE CHAIRMAN: I think we are going to have to suspend at this point because the statement that I have made is that we would adjourn at 5:30, and it is now within several minutes of that time. There are some matters that must be discussed before you get out.

The principal concern is the question of the next meeting and the length of it. Mr. Brooks told me early today he has sufficient material to keep the Commission occupied and on a steady pace for at least four days. We have a real problem in the next 30 to 60 days.

We really must complete the tentative draft, at least of the entire document, though I don't think we can possibly make our deadline. I have a great deal of trepidation in suggesting what I am about to suggest, but I do so because I see no alternative.

It seems to me that the next meeting of the Commission must be a three-day meeting if we are to get through what we already have scheduled, not considering this other work. In addition to that, merely in order to pick up what was scheduled for this meeting and be ready to move ahead with the things that were not scheduled for this meeting, we could use another day's meeting, and if it were possible, we could have a meeting next Monday consisting solely of discussions of things scheduled for this meeting which have not been reached.

I hesitate to suggest this because at the present time, I must suggest to the Committee Chairmen who are to report at the next meeting, that it is imperative that they have meetings of their Committees just as quickly as possible in order to get the drafts out. It

seems to me that it would be desirable to consider that the date for meeting, the September meeting be postponed a week as we have the past two meetings including this one.

We can't decide today definitely which day, because the only effective way we can do this is to circulate the entire membership which we will do this week. But I would like to ask those here who feel that it is feasible for us to have a three-day meeting in September. My own personal feeling is that the type of meeting we have had last month, and this is in continuous sessions, the only kind of meeting that we can possibly have and get through what we have to get through. I realize that the agenda for this meeting and the time we have spent on the Reports that have been considered has been tedious and time-consuming, but I say to you that the Reports that have been considered, particularly that on Declaration of Rights, are of transcending importance, and I don't think we can possibly consider trying to skimp over such Reports.

I think the Commission in its detailed consider-

ation, the Report on Declaration of Rights has demonstrated its concern in this area and the importance of it. Nevertheless, we must make progress, and I would be very anxious that the Commission agree to have a three-day meeting the next time. Whether this would mean without any break, or whether we could at least in one of the evenings arrange for a social break of some sort so that we wouldn't all go completely stale, I don't know. But I would like to get some reaction from those here as to the feasibility of a three-day meeting in September.

DR. JENKINS: Are you thinking, over a week-end?

THE CHAIRMAN: Not necessarily, whichever would fit best into the plans of everyone on the Committee.

(At this time the meeting adjourned, 5:45 p.m., to reconvene at the call of the Chairman.)

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